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2d Session

SENATE

{ REPORT
101-487

FEDERAL INFORMATION RESOURCES
MANAGEMENT ACT

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1742

TO FURTHER THE GOALS OF THE PAPERWORK REDUCTION ACT
AND PROVIDE FOR COMPREHENSIVE INFORMATION RESOURCES
MANAGEMENT OF FEDERAL DEPARTMENTS AND AGENCIES

together with
ADDITIONAL VIEWS



OCTOBER 2, 1990.—Ordered to be printed

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FEDERAL INFORMATION RESOURCES MANAGEMENT ACT

OCTOBER 2, 1990.—Ordered to be printed

Mr. GLENN, from the Committee on Governmental Affairs,
submitted the following

REPORT

[To accompany S. 1742]

together with

ADDITIONAL VIEWS

The Committee on Governmental Affairs, to which was referred the bill (S. 1742) to further the goals of the Paperwork Reduction Act and to provide for comprehensive information resources management of Federal departments and agencies, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. AMENDMENT

S. 1742, as amended, is in the nature of a substitute amendment.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Information Resources Management Act".

SEC. 2. FINDINGS.

The Congress finds that—

- (1) Federal information policy requires revision and updating;
- (2) despite the significant effort to reduce unnecessary paperwork burden, such burden has continued to increase;
- (3) more needs to be done to eliminate any unnecessary paperwork burden on individuals, businesses, educational institutions, and State and local governments, particularly with respect to any unnecessary burden associated with the Federal procurement, grant programs, Federal taxation, and United States international competitiveness;
- (4) the Office of Management and Budget must do more to fulfill its full range of information policy functions in order to meet the changing information needs of the Government and society;
- (5) the information resources management concept is not well understood in Federal agencies, and the Office of Management and Budget needs to do more to promote this concept as a means of strengthening agency information management capabilities;
- (6) coordination of Federal information policy depends on stronger leadership from the Congress and the executive branch; and
- (7) the Office of Management and Budget review of Federal agency submissions requires less delay and more public accountability.

SEC. 3. TABLE OF CONTENTS.

The contents of this Act are as follows:

- Sec. 1. Short title.
- Sec. 2. Findings.
- Sec. 3. Table of contents.

TITLE I—INFORMATION RESOURCES MANAGEMENT OF FEDERAL DEPARTMENTS AND AGENCIES

- Sec. 101. Purpose.
- Sec. 102. Definitions.
- Sec. 103. Office of Information and Regulatory Affairs.
- Sec. 104. Authority and functions of the Administrator.
- Sec. 105. Paperwork reduction goals.
- Sec. 106. Federal agency responsibilities.
- Sec. 107. Approval and delegation of information collection; self-certification process.
- Sec. 108. Federal Information Locator System.
- Sec. 109. Review of agency activities; reporting; agency response.
- Sec. 110. Responsiveness to Congress.
- Sec. 111. Consultation and advisory committees.
- Sec. 112. Public disclosure and reporting by the Office of Information and Regulatory Affairs.
- Sec. 113. Authorization of appropriations.
- Sec. 114. Technical and conforming amendments.

TITLE II—COMMISSION ON FEDERAL INFORMATION

- Sec. 201. Findings.
- Sec. 202. Establishment of the Commission.
- Sec. 203. Functions of the Commission.
- Sec. 204. Membership of the Commission.
- Sec. 205. Travel expenses.
- Sec. 206. Powers of the Commission.
- Sec. 207. Cooperation with Federal agencies.
- Sec. 208. Termination of the Commission.
- Sec. 209. Authorization of appropriations.

TITLE III—MANAGEMENT OF PUBLIC RECORDS

- Sec. 301. Binding regulations concerning public records.
- Sec. 302. Reports on routine uses.

TITLE I—INFORMATION RESOURCES MANAGEMENT OF FEDERAL DEPARTMENTS AND AGENCIES

SEC. 101. PURPOSES.

Section 3501 of title 44, United States Code, is amended to read as follows:

"§ 3501. Purposes

"The purposes of this chapter are to—

"(1) ensure the greatest possible public benefit from information collected, maintained, used, disseminated, and retained by the Federal Government;

"(2) eliminate any unnecessary Federal paperwork burden for individuals, businesses, educational institutions, State and local governments, and other persons;

"(3) minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information;

"(4) emphasize Federal information resources management as a comprehensive and integrated process for improving the efficiency and effectiveness of government information activities;

"(5) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and efficiency in Government and society;

"(6) ensure that automatic data processing, telecommunications, and other information technologies are acquired and used to achieve all purposes of Federal information policy under chapter 35 of title 44, United States Code;

"(7) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information policies and practices;

"(8) improve the accountability of the Office of Management and Budget and all Federal agencies to Congress and the public for the effective implementation of this chapter;

"(9) ensure that the collection, maintenance, use, dissemination, and retention of information by the Federal Government is consistent with applicable laws, including laws relating to—

"(A) confidentiality of information, including section 552a of title 5, United States Code;

"(B) security of information including the Computer Security Act of 1987 (Public Law 100-235);

"(C) access to information, including section 552 of title 5, United States Code;

"(D) collection, dissemination, and retaining of information, including title 44, United States Code; and

"(10) strengthen the partnership between the Federal Government and State and local governments in the collection and sharing of government information."

SEC. 102. DEFINITIONS.

Section 3502 of title 44, United States Code, is amended—

(1) by redesignating paragraphs (1) through (12) as paragraphs (2) through (13), respectively;

(2) by redesignating paragraphs (13) and (14) (as designated before the date of the enactment of this Act) as paragraphs (15) and (16), respectively;

(3) by redesignating paragraphs (15) through (17) (as designated before the date of the enactment of this Act) as paragraphs (18) through (20), respectively;

(4) by inserting before paragraph (2) (as redesignated by paragraph (1) of this section) the following new paragraph:

"(1) the term 'Administrator' means the Administrator of the Office of Information and Regulatory Affairs established under section 3503;"

(5) by amending paragraph (4) (as redesignated by paragraph (1) of this section) by inserting before the semicolon "including the resources expended for reviewing instructions, searching existing data sources, compiling and maintaining the necessary data, completing and reviewing the collection of information, and transmitting or otherwise disclosing the information involved";

(6) by inserting after paragraph (13) (as redesignated by paragraph (1) of this section) the following new paragraph:

"(14) the term 'information resources' includes—

"(A) data and information in any format;

"(B) information resource management professionals; and

"(C) related resources such as information technology;"

(7) by amending paragraphs (15) and (16) (as redesignated by paragraph (2) of this section) to read as follows:

"(15) the term 'information resources management' means—

"(A) the process—

(i) of defining in a systematic way the information needs to effectively accomplish the agency missions, goals, and objectives;

(ii) of managing information resources to efficiently, economically, and equitably meet the defined information needs; and

"(iii) of integrating the skills of individuals in the various information resources management functions set forth in section 3504 of this title,

in order to provide for the information needs of the agency in a reliable, accurate, complete, and timely manner; and

"(B) such process extends through the stages of collection or creation, processing, use, dissemination, and disposition of information by agencies and includes the management activities of planning, budgeting, organizing, directing, controlling, and evaluating the use of such resources;

"(16) the term 'information system' means—

"(A) information developed or acquired and maintained through either manual or automated means to fulfill an agency's mission, goals, or objectives;

"(B) the processes and procedures to obtain, maintain, use, and disseminate information; and

"(C) the related information technology resources;"; and

(8) by inserting before paragraph (18) (as redesignated by paragraph (3) of this section) the following new paragraph:

"(17) the term 'information technology' means the hardware and software used in connection with Government information, regardless of the technology involved, and including automatic data processing equipment, as defined under section 111(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a));".

SEC. 103. OFFICE OF INFORMATION AND REGULATORY AFFAIRS.

Section 3503 of title 44, United States Code, is amended by striking out subsection (b) and inserting in lieu thereof:

"(b) The Director of the Office of Management and Budget shall be responsible and accountable for overseeing all requirements, functions, activities, and expenditures under this chapter, and shall ensure coordination of the provisions of this chapter with other functions at the Office of Management and Budget.

"(c) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall be appointed with special attention to professional qualifications and credentials which shall include education, work experience, or related professional activities required to administer the functions of the Office of Information and Regulatory Affairs described under this chapter.

"(d) In the preparation of the budget submitted by the President to the Congress under section 1105(a) of title 31, United States Code, in each fiscal year, the Office of Information and Regulatory Affairs shall be included as a separate line item within the budget of the Office of Management and Budget."

SEC. 104. AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR.

(a) IN GENERAL.—Section 3504(a) of title 44, United States Code, is amended to read as follows:

"(a)(1) The Administrator is authorized to administer all functions under this chapter and shall report directly to the Director.

"(2) The Administrator shall develop and implement Federal information policies, principles, standards, and guidelines and shall provide direction and oversee the review and approval of information collection requests, the elimination of any unnecessary paperwork burden, Federal statistical activities, records management activities, privacy and security of records, agency sharing and dissemination of information, and acquisition and use of automatic data processing, telecommunications, and other information technology for managing information resources. The authority of the Administrator under this section shall be exercised consistent with applicable law.

"(3) The Administrator shall ensure that the Office of Information and Regulatory Affairs shall give balanced emphasis to all the functions under this chapter.

"(4) The Administrator shall ensure that the development of information policies shall be coordinated with agencies with shared information management responsibilities under this chapter and other provisions of law.

"(5) The Administrator shall coordinate the development and implementation of information policy through the establishment of interagency working groups.

"(6) The Administrator shall ensure the development of formalized training programs on information resources management by appropriate entities, for Government-wide use, and educate employees of the Office of Information and Regulatory Affairs on such concepts.

"(7)(A) The Administrator may initiate and conduct, with selected agencies and consenting non-Federal entities as appropriate, small-scale pilot projects and similar activities to test or demonstrate the feasibility and value of changes or innovations in Federal policies, rules, regulations and agency procedures to improve information practices and related activities.

"(B) The Administrator shall inform the President and the Congress of the findings and progress of such projects and activities.

"(C) All Federal agencies shall cooperate to the greatest extent allowed by law with the conduct of such projects and activities."

(b) **INFORMATION COLLECTION FUNCTIONS.**—Section 3504(c) (5) and (6) of title 44, United States Code, are amended to read as follows:

"(5) promoting the elimination of unnecessary burdens imposed through the collection of Federal information, with particular emphasis on those persons most heavily burdened, especially in the areas of Federal procurement, grant programs, Federal taxation, and United States international competitiveness;

"(6) coordination with the Office of Federal Procurement Policy to address unnecessary paperwork burdens associated with procurement and acquisition; and"

(c) **STATISTICAL POLICY AND COORDINATION FUNCTIONS.**—Section 3504(d) of title 44, United States Code, is amended to read as follows:

"(d)(1) The statistical policy and coordination functions of the Administrator shall include—

"(A) coordinating and providing leadership for development of the Federal statistical system;

"(B) developing and periodically reviewing and, as necessary, revising long-range plans for the improved coordination and performance of the statistical activities and programs of the Federal Government;

"(C) ensuring the integrity, objectivity, impartiality, and confidentiality of the Federal statistical system;

"(D) reviewing budget proposals of agencies to ensure that the proposals are consistent with such long-range plans and developing a summary and analysis of the budget submitted by the President to the Congress for each fiscal year of the allocations for all statistical activities;

"(E) coordinating, through the review of budget proposals and as otherwise provided in this chapter, the functions of the Federal Government with respect to gathering, interpreting, and disseminating statistics and statistical information;

"(F) developing and implementing Government-wide policies, principles, standards, and guidelines concerning statistical collection procedures and methods, statistical data classification, statistical information presentation and dissemination, and such statistical data sources as may be required for the administration of Federal programs;

"(G) evaluating statistical program performance and agency compliance with Government-wide policies, principles, standards, and guidelines;

"(H) promoting the timely release of statistical data to the public;

"(I) coordinating the participation of the United States in international statistical activities, such as the development of comparable statistics;

"(J) preparing an annual report to submit to the Congress on the statistical policy and coordination function;

"(K) integrating the functions described in this paragraph with the other information resources management functions specified in this chapter; and

"(L) appointing a chief statistician who is a trained and experienced professional statistician to carry out the functions described in this paragraph.

"(2) The Administrator shall establish an interagency working group on statistical policy headed by a chief statistician to coordinate agency activities in carrying out the functions under paragraph (1), consisting of the heads of the agencies with major statistical programs.

"(3) The Office of Information and Regulatory Affairs shall provide opportunities for long-term training in the statistical policy functions of the Office of Information and Regulatory Affairs to employees of the Federal Government. Each trainee shall be selected at the discretion of the Administrator based on agency requests and shall serve for at least six months and no more than one year. All costs of the training are to be paid by the agency requesting training."

(d) **PRIVACY FUNCTIONS.**—Section 3504(f) of title 44, United States Code, is amended—

(1) in paragraph (2) by striking out "and" at the end thereof;

(2) in paragraph (3) by striking out the period and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"(4) overseeing the development of new information systems by Federal agencies containing personal information to ensure compliance with information policies, principles, standards, and guidelines, and existing information privacy laws; and

"(5) conducting periodic review of agency compliance, identify problems, and report the results to the Senate Committee on Governmental Affairs and the House Committee on Government Operations."

(e) **INFORMATION DISSEMINATION FUNCTIONS OF THE ADMINISTRATOR.**—Section 3504(h) of title 44, United States Code, is amended to read as follows:

"(h)(1) The information dissemination functions of the Administrator shall include the responsibility to—

"(A) develop policy guidelines, to be issued after notice and receipt of public comment, which shall enable Federal agencies to fulfill information dissemination functions and activities;

"(B) promote policy research and development in the area of information dissemination as a basis for developing effective guidance for program and policy development in the Federal agencies;

"(C) establish procedures for systematic oversight to ensure that the principles, purposes, and guidance expressed in this subsection are carried out; and

"(D) coordinate the identification of priorities for developing uniform technical standards.

"(2) In furthering the provisions of paragraph (1)(D)—

"(A) the Department of Commerce shall, after consultation with the public and appropriate agencies, issue uniform technical standards; and

"(B) the Office of Management and Budget shall encourage the use of the Department of Commerce standards through its policy guidelines and assistance, and monitor the effectiveness of such standards.

"(3) Guidance issued by the Administrator under paragraph (1) shall—

"(A) be developed in consultation with central information management agencies possessing Government-wide dissemination authority under law;

"(B) strengthen public access to Government information, regardless of format, consistent with existing law including—

"(i) making public information products and services available on a timely, equitable and equal basis to all persons; and

"(ii) encouraging a diversity of public and private information products and services;

"(C)(i) maintain an affirmative role for Federal agencies in the dissemination of Government information, consistent with law; and

"(ii) reflect a view that a public and private sector sharing of responsibility for information dissemination is sound public policy;

"(D) reflect that each agency has the final administrative responsibility for the management of its Federal information resources and its information dissemination functions;

"(E) require an agency, in determining how to fulfill its public information dissemination functions, to consider—

"(i) whether dissemination is required by law;

"(ii) whether dissemination is necessary for the proper performance of agency functions;

"(iii) whether disseminating public information would assist in public oversight of agency operations or would promote the general social or economic welfare of the United States;

"(iv) if an information product or service available from other public or private sources is equivalent to an agency product or service and reasonably achieves the dissemination objectives of the agency product or service;

"(v) dissemination methods that will maximize the utility of the information to the public; and

"(vi) the economy and efficiency of Government operations."

SEC. 105. PAPERWORK REDUCTION GOALS.

Section 3505 of title 44, United States Code, is amended to read as follows:

"§ 3505. Paperwork reduction goals

"In carrying out the functions under this chapter, the Administrator shall upon the date of the enactment of the Federal Information Resources Management Act—

"(1) identify initiatives to eliminate any unnecessary burden of Federal collections of information associated with individuals, businesses, educational institutions, and State and local governments, particularly with respect to any unnecessary burden associated with Federal procurement, grant programs, Federal taxation and United States international competitiveness; and

"(2) identify areas of unnecessary duplication in information collection requests and develop methods for eliminating unnecessary duplications."

SEC. 106. FEDERAL AGENCY RESPONSIBILITIES.

Section 3506 of title 44, United States Code, is amended—

(1) in subsection (a) by striking out "Each agency" and inserting in lieu thereof "The head of each agency has administrative responsibility for the agency's information management activities and";

(2) in subsection (b)—

(A) by inserting "(1)" before "the head of each agency"; and

(B) by adding at the end thereof the following new paragraphs:

"(2)(A) Each official designated under paragraph (1) shall appoint a Chief Information Resources Management Official who shall—

"(i) report to the senior official (except in the case that the Chief Information Resources Management Official may be the senior official);

"(ii) be in the competitive service or in the senior executive service (except for that official designated within the Tennessee Valley Authority); and

"(iii) be a career appointee.

"(B) Any positions designated under this paragraph shall be career reserve positions (except for positions within the Tennessee Valley Authority).

"(C) The Chief Information Resource Management Official shall assist in agency information needs assessments and in the deployment of appropriate information technology to gather, process, use, and disseminate information that is—

"(i) critical to successful accomplishment of program goals and agency mission; or

"(ii) essential for efficient and effective agency management, particularly financial management.

"(3) Officials designated under paragraph (2) shall be well qualified through experience or training to carry out the programs and activities authorized under this chapter. Such officials shall be sufficiently independent of program responsibility, but shall work with program officials in fulfilling the requirements of subsection (c).";

(3) in subsection (c)—

(A) by redesignating paragraphs (1) through (6) as paragraphs (4) through (9), respectively;

(B) by redesignating paragraphs (7) and (8) (as designated before the date of the enactment of this Act) as paragraphs (11) and (12), respectively;

(C) by inserting before paragraph (4) (as redesignated in subparagraph (A) of this paragraph) the following new paragraphs:

"(1) establish an agency-wide program of information resources management;

"(2) develop, implement, and evaluate formalized training programs in consultation with appropriate agencies, on information resources management concepts, and educate program officials about information resources management as a managerial discipline requiring all managers to take responsibility for life cycle management of information resources;

"(3) develop information systems, processes and procedures that—

"(A) enhance the sharing of common data across program and agency lines consistent with law; and

"(B) maximize the usefulness and timely release of Government information to all users within and outside the agency, including the public where appropriate;";

(D) in paragraph (4) (as redesignated by subparagraph (A) of this paragraph) by amending such paragraph to read as follows:

"(4) systematically inventory and maintain current, complete records of the agency's information resources, including its major information systems, its automatic data processing equipment, and, except for good cause shown, its information resource management professionals, for use in developing and updating the agency's information resources management plans and for informing the public, consistent with other provisions of law;";

(E) in paragraph (9) (as redesignated by subparagraph (A) of this paragraph) by inserting "and retaining" after "sharing, dissemination;";

(F) by inserting after paragraph (9) (as redesignated by subparagraph (A) of this paragraph) the following paragraph:

"(10) establish and maintain a system for dissemination of information, regardless of format, that shall—

"(A) ensure that the public has timely, equitable, and equal access to the agency's public information products and services and that agency information dissemination programs disseminate agency public information products and services in an efficient, effective, and economical manner;

"(B) plan and budget for information dissemination at the time information is created or collected, and at other appropriate steps during the information life cycle;

"(C) provide to the public adequate advance notice when the agency initiates, terminates, or significantly modifies significant public information products and services; and

"(D) provide to the Superintendent of Documents for distribution to the Federal Depository Library Program all publications required by chapter 19 of this title to be made available;"

(G) in paragraphs (11) and (12) (as redesignated by subparagraph (B) of this paragraph) by amending such paragraphs to read as follows:

"(11) consistent with Government-wide policies and guidance periodically evaluate and, as needed, improve, the accuracy, completeness, reliability, and timeliness of data and records contained within Federal information systems and the capabilities of such systems for ensuring—

"(A) public access to public information; and

"(B) privacy, confidentiality, and security;

"(12) develop and annually update a five-year information resources management plan, in accordance with the appropriate guidelines issued by the Office of Information and Regulatory Affairs for meeting the agency's information and information technology needs;" and

(H) by adding at the end thereof the following new paragraphs:

"(13) ensure appropriate coordination and integration of the agency's information resources management plan with the agency's strategic plan, budget, and financial management systems; and

"(14) in developing information systems, implement applicable Government-wide and agency policies, principals, standards and guidelines for financial management systems;"

(4) by amending subsection (d) to read as follows:

"(d) In carrying out functions under this chapter and any other functions involving review (not specifically authorized by this chapter) by the Office of Information and Regulatory Affairs of agency activities, the head of each agency shall establish and maintain a public file for its activities under review by the Office of Information and Regulatory Affairs. The agency head shall make such file available in the public reading room at the agency when any written materials, regardless of format, are provided to or received from the Office of Information and Regulatory Affairs by an agency. Such public file shall include with respect to the activity—

"(1) copies of all written materials regardless of format which the agency provides to or receives from the Office of Information and Regulatory Affairs;

"(2) information about all submissions made by the agency to the Office of Information and Regulatory Affairs, including—

"(A) the date of the submission;

"(B) the nature of the agency activity with respect to which the submission is made; and

"(C) the name of the person at the Office of Information and Regulatory Affairs to whom the submission is made; and

"(3) an explanation of all changes in the agency activity made as a result of recommendations by the Office of Information and Regulatory Affairs;" and

(5) by adding at the end thereof the following new subsections:

"(e) The head of each agency, or the official designated under subsection (b), shall establish a process for the review of each collection of information before it is submitted to the Administrator for review and approval under this chapter. At a minimum, this official shall ensure that the process—

"(1) is sufficiently independent of program responsibilities to evaluate fairly whether each collection of information should be carried out;

"(2) has sufficient resources to carry out such responsibility effectively; and

"(3) provides agency authority independent of agency program officers to approve, disapprove, and make needed improvements in any agency collection of information.

"(f) Under the process established in subsection (e), the senior official shall certify to the Administrator that—

"(1) the collection of information and any related instructions—

"(A) are necessary for the proper performance of the agency's functions and are not unnecessarily burdensome;

"(B) are not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(C) have practical utility;

"(D) are written using plain and unambiguous terminology and are understandable to those who are to respond; and

"(E) explain the need and ultimate use of the information to be collected, and the importance of accurate and timely response; and

"(2) the agency has taken necessary steps—

"(A) to give notice to and consult with interested agencies and members of the public in order to enhance the clarity of that collection of information and to minimize its burden on respondents; and

"(B) to plan and allocate resources for the effective and efficient management and use of the information to be obtained."

SEC. 107. APPROVAL AND DELEGATION OF INFORMATION COLLECTION; SELF-CERTIFICATION PROCESS.

Section 3507 of title 44, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(B)—

(i) by inserting "a summary of the request," after "title for the information collection request,";

(ii) by inserting "and benefit" after "an estimate of the burden"; and

(iii) by striking out "; and" and inserting in lieu thereof ", and given notice of a period of not less than 30 days for submission of comments by the public, and identification of an official at the agency and the Office of Information and Regulatory Affairs to whom comments may be submitted, including an address for each official;";

(B) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

"(3) the agency provides at least 30 days for public comment to the agency and the Office of Information and Regulatory Affairs after publication of notice in the Federal Register, and the agency and the Administrator consider comments received regarding the proposed collection of information; and";

(2) in subsection (b)—

(A) by inserting "but not before the thirty-day public comment period has concluded," after "receipt of a proposed information collection request,"; and

(B) by adding at the end thereof "The Administrator shall provide a written explanation to be placed in the public file and made available upon request for any information collection request reviewed by the Office of Information and Regulatory Affairs, the reasons for any disapproval or modification of a substantive or material nature.";

(3) in subsection (d)—

(A) by striking out "The Director" and inserting in lieu thereof "(1) The Administrator"; and

(B) by adding at the end thereof the following new paragraphs:

"(2)(A) If the head of the agency, or the designated senior official, decides to seek extension of the Administrator's approval granted for a currently approved information collection request, the agency shall, through the notice prescribed in subsection (a)(2)(B) and such other practicable steps as may be reasonable, seek comment from the agencies, and the public on the continued need for, and burden imposed by, the collection of information.

"(B) Thereafter, but no later than sixty days before the expiration date of the control number assigned by the Administrator for the currently approved information collection request, the agency shall—

"(i) evaluate the public comments received;

"(ii) conduct the review established by section 3506(e); and

"(iii) provide to the Administrator the certification required by section 3506(f), including the text of the certification and any additional relevant information regarding how the information collection request comports with the principles and requirements of this chapter.

"(C) Upon receipt of such certification, and prior to the expiration of the control number for that information collection request, the Administrator shall—

"(i) assure that the agency has taken the actions specified in section 3506(f)(2);
 "(ii) evaluate the public comments received by the agency or by the Administrator;

"(iii) determine whether the agency certification complies with the standards set forth in section 3506(f)(1); and

"(iv) approve or disapprove the information collection request pursuant to this chapter.

"(3) If a certification is not provided to the Administrator prior to the beginning of the sixty-day period before the expiration of the control number as provided by paragraph (2)(B), the agency shall submit the information collection request for review and approval or disapproval under this chapter.

"(4) An agency may not make a substantive or material modification to an information collection request after it has been approved by the Administrator, unless the modification has been submitted to the Administrator for review and approval or disapproval under this chapter.";

(4) in subsection (h) in the second sentence by striking out "subsection" and inserting in lieu thereof "chapter"; and

(5) by adding at the end thereof the following new subsections:

"(i)(1) As soon as practicable, but no later than publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Administrator a copy of any proposed rule which contains a collection of information requirement and upon request, information necessary to make the determination required pursuant to this chapter.

"(2) Within sixty days after the notice of proposed rulemaking is published in the Federal Register, the Administrator may file public comments pursuant to the standards set forth in section 3508 on the collection of information requirement contained in the proposed rule.

"(3) When a final rule is published in the Federal Register, the agency shall explain how any collection of information requirement contained in the final rule responds to the comments, if any, filed by the Administrator or the public, or explain why the agency rejected those comments.

"(4) The Administrator has no authority to disapprove any collection of information requirement specifically contained in an agency rule, if the Administrator has received notice and failed to comment on the rule within sixty days of the notice of proposed rulemaking.

"(5) No provision of this section may be construed to limit the Administrator, in his discretion from—

"(A) disapproving any information collection request which was not specifically required by an agency rule;

"(B) disapproving any collection of information requirement contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

"(C) disapproving any collection of information requirement contained in a final agency rule, if the Administrator finds within sixty days of the publication of the final rule that the agency's response to the comments of the Administrator filed pursuant to paragraph (2) of this subsection was unreasonable; or

"(D) disapproving any collection of information requirement where the Administrator determines that the agency has substantially modified in the final rule the collection of information requirement contained in the proposed rule where the agency has not given the Administrator the information required in paragraph (1), with respect to the modified collection of information requirement, at least sixty days before the issuance of the final rule.

"(6) The Administrator shall make publicly available any decision to disapprove a collection of information requirement contained in an agency rule, together with the reasons for such decision.

"(7) The authority of the Administrator under this subsection is subject to the provisions of subsection (c).

"(8) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

"(9) The decision of the Administrator to approve or not to act upon a collection of information requirement contained in an agency rule shall not be subject to judicial review.

"(j)(1) If the head of the agency, or the designated senior official, decides to seek extension of the Administrator's approval granted for a currently approved collection of information requirement, the agency shall, through the notice prescribed in subsection (a)(2)(B) and such other practicable steps as may be reasonable, seek com-

ment from the agencies, and the public on the continued need for, and the burden imposed by, the collection of information requirement.

"(2) Thereafter, but no later than sixty days before the expiration date of the control number assigned by the Administrator for the currently approved collection of information requirement, the agency shall—

"(A) evaluate the public comments received;

"(B) conduct the review established by section 3506(e); and;

"(C) provide to the Administrator the certification required by section 3506(f), including the text of the certification and any additional relevant information regarding how the collection of information requirement comports with the principles and requirements of this chapter.

"(3) Upon receipt of such certification, and prior to the expiration of the control number for that collection of information requirement, the Administrator shall—

"(A) assure that the agency has taken the actions specified in section 3506(f)(2);

"(B) evaluate the public comments received by the agency or by the Administrator;

"(C) determine whether the agency certification complies with the standards set forth in section 3506(f)(1); and

"(D) approve, unless—

"(i) the agency has failed to comply with paragraph (1), (2), or (3) of this subsection;

"(ii) the agency proposes to make substantive or material modification to the collection of information requirement;

"(iii) the Administrator finds the agency certification to be unreasonable or not adequately supported by the record compiled by the agency; or

"(iv) the Administrator determines that the record upon which the agency made the certification is not complete.

"(4) If, under paragraph (3), the Administrator disapproves or recommends or instructs the agency to make a substantive or material change to a collection of information requirement, the Administrator shall—

"(A) publish an explanation thereof in the Federal Register; and

"(B) instruct the agency to undertake a rulemaking limited to consideration of changes to the collection of information requirement and thereafter to submit the collection of information requirement for approval or disapproval under section 3507(i).

"(5) Nothing in this subsection affects the review process for a collection of information requirement, including a proposed change to an existing collection of information requirement, under section 3507(i) with respect to such collection of information requirement.

"(6) The Administrator may not approve a collection of information requirement for a period in excess of three years."

SEC. 108. FEDERAL INFORMATION LOCATOR SYSTEM.

Section 3511 of title 44, United States Code, is amended to read as follows:

"§ 3511. Establishment and operation of Federal Information Locator System

"(a) The Administrator shall cause to be established and maintained a Federal Information Locator System (hereinafter in this section referred to as the 'system'), which shall—

"(1) serve as a comprehensive inventory, and as the authoritative register, of all information collection requests by the Federal Government to the public; and

"(2) be designed to assist agencies and the public in locating public information.

"(b) In designing the system, the Administrator shall—

"(1) designate as necessary one or more agencies to operate the system;

"(2) require the head of each agency to prepare in a form to be specified by the Administrator, and to submit for inclusion in the system, a data profile for each—

"(A) system of records of the agency required to be identified under section 552a of title 5; and

"(B) information collection request and each information collection requirement approved by the Administrator pursuant to section 3506;

"(3) ensure that no information which is not public information is included in the system.

"(c) Within one year after the date of the enactment of the Federal Information Resources Management Act, the Administrator shall—

"(1) determine, in consultation with other agencies and the Advisory Committee on Information Policy, the optimal composition of the system in order to accomplish its purposes; and

"(2) report to the Senate Committee on Governmental Affairs and the House Committee on Government Operations on the status of the development and implementation of the system, including the Administrator's determination as to the composition of the system and the appropriate operating entity.

"(d) The Administrator shall on an ongoing basis review the effectiveness of the Federal Information Locator System."

SEC. 109. REVIEW OF AGENCY ACTIVITIES; REPORTING; AGENCY RESPONSE.

Section 3513 of title 44, United States Code, is amended by adding at the end thereof the following new subsections:

"(d) The Administrator shall on an ongoing basis review standards and requirements for agency audits for all major information systems and assign responsibility for conducting Government-wide or multiagency audits (except the Administrator may not assign such responsibility for the audit of major information systems used for the conduct of criminal investigations or intelligence activities as defined in section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, or for cryptologic activities that are communications security activities.

"(e) The Administrator shall on an ongoing basis—

"(1) establish and review a schedule and a management control system to ensure that practices and programs of information handling disciplines, including records management, are appropriately integrated with the information policies mandated by this chapter;

"(2) identify initiatives to improve productivity in Federal operations using information processing technology; and

"(3) develop and review a program to—

"(A) enforce Federal information processing standards, particularly software language standards, at all Federal installations;

"(B) revitalize the standards development program established under section 111 (d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)), as amended by the Computer Security Act (Public Law 100-235); and

"(C) separate such program from peripheral technical assistance functions and direct such program to the most productive areas; and

"(4) develop and annually revise, in consultation with the Administrator of General Services, the Secretary of Commerce, and the Archivist of the United States, a five-year plan for information resources management, which shall include—

"(A) plans for managing information throughout its life cycle from collection through dissemination and disposition, and

"(B) plans for meeting the automatic data processing equipment (including telecommunications) needs of the Federal Government in accordance with the requirements of sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759) and the purposes of this chapter."

SEC. 110. RESPONSIVENESS TO CONGRESS.

Section 3514 of title 44, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (9)(C) by striking out "and" at the end thereof;

(B) in paragraph (10)(C) by striking out the period and inserting in lieu thereof a semicolon; and

(C) by adding at the end thereof the following new paragraphs:

"(11) a description and summary of actions taken with respect to dissemination functions described under section 3504(h) of this title;

"(12) a summary of the results of selective reviews performed in accordance with section 3513 of this title by Federal agencies of the adequacy and efficiency of their information resources management activities;

"(13) the report under the Privacy Act of 1974, when required by subsection (a) of section 552a of title 5, United States Code; and

"(14) the report on matching programs, when required by subsection (u)(6) of section 552a of title 5, United States Code."

(2) by adding at the end thereof the following new subsection:

"(c) Within one year after the date of the enactment of the Federal Information Resources Management Act the Administrator shall submit a report to the Senate

Committee on Governmental Affairs and the House Committee on Government Operations—

“(1) on the Federal demonstration project in federally sponsored research that—

“(A) comprehensively lists all information collection requests subject to the requirements of the provisions of this chapter together with estimates of the associated burdens;

“(B) specifically identifies information requests subject to the provisions of this chapter which have not been justified by agencies and approved by the Administrator; and

“(C) provides recommendations which would eliminate any unnecessary burden associated with such requests while providing adequate accountability of expenditures;

“(2) on the progress of the initiatives identified under section 3505(1); and

“(3) on the results of the elimination of any unnecessary duplication associated with the review under section 3505(2).”; and

(3) by adding at the end thereof the following new subsection:

“(d) Within one year after the date of the enactment of the Federal Information Resources Management Act, the Administrator shall report to the Congress, after consultation with other agencies and the Advisory Committee on Information Policy, on the feasibility and means of establishing a comprehensive inventory and authoritative register of all information dissemination products and services disseminated by the Federal Government.”.

SEC. 111. CONSULTATION AND ADVISORY COMMITTEES.

Section 3517 of title 44, United States Code, is amended to read as follows:

“§ 3517. Consultation and advisory committees

“(a) In reviewing information collection requests, the Administrator shall provide interested agencies and persons timely opportunity to comment.

“(b) In developing information and statistical policies, plans, rules, regulations, procedures, and guidelines, the Administrator shall regularly consult with information providers, users, and other interested parties, including the advisory committees established under the authority granted in this section.

“(c)(1) The Administrator shall establish an Advisory Committee on Information Policy to advise in carrying out the functions assigned under section 3504(b) and an Advisory Committee on Statistical Policy to advise in carrying out the functions assigned under section 3504(d)(1).

“(2) Each such committee shall consist of no less than twenty members;

“(d) Any advisory committee established by the Administrator shall—

“(1) be broadly representative of the groups with an interest in the relevant policy area;

“(2) include representatives of educational institutions, businesses, State and local governments, labor, public interest groups, and any other appropriate members.

“(3) provide for a two year term for members appointed by the Administrator, except that one-half of the initial appointments be made for a term of three years;

“(4) provide that an individual may be reappointed to the committee for any number of terms;

“(5) provide that appointments shall be made without regard to political affiliation; and

“(6) comply with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

“(e) No later than one hundred and eighty days after the date of the enactment of the Federal Information Resources Management Act, the Administrator shall complete the initial appointment of members to the Advisory Committee on Information Policy and the Advisory Committee on Statistical Policy.”.

SEC. 112. PUBLIC DISCLOSURE AND REPORTING BY THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS.

Chapter 35 of title 44, United States Code, is amended—

(1) by redesignating sections 3518 through 3520 as sections 3519 through 3521; and

(2) inserting after section 3517 the following:

"§ 3518. Public disclosure and reporting

"(a) In carrying out the functions under the provisions of this chapter and any other functions involving review (not specifically authorized by this chapter) by the Office of Information and Regulatory Affairs, the Administrator shall establish and maintain a public file for each agency activity under review in the public reading room of the Office of Information and Regulatory Affairs.

"(b)(1) The Administrator shall immediately create the public file upon receiving written material, regardless of format, from an agency, which initiates a review of agency activity, and such material shall be placed in such file.

"(2) Upon receiving any additional written materials, regardless of format, related to the review of the agency activity, the Administrator shall make such materials available in each public file, established under paragraph (1), no later than five calendar days after the Office of Information and Regulatory Affairs receives or provides such materials, including—

"(A) copies of all written materials, regardless of format, related to any review activity which are received or provided by the Office of Information and Regulatory Affairs from or to—

"(i) an officer or employee of the agency conducting the activity, and officers or employees of other agencies;

"(ii) an officer or employee of the Office of Information and Regulatory Affairs; or

"(iii) any person outside the Federal Government;

"(B) copies of any drafts of pre-rulemaking, advanced notice, or notice of rulemaking; and

"(C) copies of any proposed or final rulemaking.

"(3) Nothing in the provisions of paragraph (2) may be construed to require the public disclosure of any communication between the Office of Management and Budget and any other office within the Executive Office of the President.

"(c) The Administrator shall place in the appropriate public file a notice of each meeting attended by employees of the Office of Information and Regulatory Affairs with persons outside the Federal Government relating to a review activity within five calendar days of such meeting.

"(d) Within five calendar days after the conclusion of the review of an agency activity by the Office of Information and Regulatory Affairs, the Administrator shall place in each public file—

"(1) a summary of any changes made as a result of recommendations or actions by the Office of Information and Regulatory Affairs during the review of an agency activity, including reasons and authority for such changes; and

"(2) an explanation of any action taken as a result of a review of any submission.

"(e)(1) At the end of each calendar month, the Administrator shall make public and place in the public reading room of the Office of Information and Regulatory Affairs a list of all proposed or final rules which are submitted for review by the Office of Information and Regulatory Affairs and the estimated length of the review of each.

"(2) The Administrator shall place in the public reading room of the Office of Information and Regulatory Affairs all written materials received from persons outside the Federal Government concerning any agency rulemaking not under review.

"(3) The Administrator of the Office of Information and Regulatory Affairs shall—

"(A) send the appropriate agencies copies of all written material regardless of format concerning an agency rulemaking activity under review, that such office receives from persons who are not employees of the Federal Government;

"(B) advise the appropriate agencies on the substance of all oral communications concerning an agency rulemaking activity under review that the Office of Information and Regulatory Affairs has with persons who are not employees of the Federal Government; and

"(C) invite the appropriate agency heads to all scheduled meetings with persons who are not employees of the Federal Government concerning an agency rulemaking activity under review.

"(4) Only the Administrator and Deputy Administrator of the Office of Information and Regulatory Affairs may communicate with any person who is not employed by the Federal Government on regulations submitted to such office for review.

"(f)(1) The Administrator shall complete review of any regulatory activity of an agency, no later than the earlier of—

"(A) sixty days after the date of the submission of regulatory activity to the Office of Management and Budget by the agency; or

"(B) any date established by statute or court order for completion of the regulatory review activity.

"(2) If the Administrator determines that a review of a proposed regulation cannot be completed within sixty days, the Administrator may, upon written notice to the head of the agency involved and placement of such notice in the public file, extend the review period for an additional thirty days.

"(3) The review shall be considered complete, if the Administrator either fails to provide written notice of the extension to the agency head under paragraph (2), or at the conclusion of the ninety day review period.

SEC. 113. AUTHORIZATION OF APPROPRIATIONS.

Section 3521 of title 44, United States Code (as redesignated in section 112 of this Act) is amended in subsection (a) by striking out "\$5,500,000 for each of the fiscal years 1987, 1988, and 1989" and inserting in lieu thereof "for the four fiscal years next following the first September 30 occurring after the date of the enactment of the Federal Information Resources Management Act, \$5,500,000 for the first year, \$6,500,000 for the second year, \$7,000,000 for the third year, and \$7,000,000 for the fourth year. Notwithstanding the provisions of the preceding sentence, if the date of the enactment of the Federal Information Resources Management Act is on or after September 30, 1990, all authorizations under this subsection shall be for successive years and the first such year shall be fiscal year 1990."

SEC. 114. TECHNICAL AND CONFORMING AMENDMENTS.

(a) **TABLE OF SECTIONS.**—The table of sections for chapter 35 of title 44, United States Code, is amended by striking out the items relating to sections 3518 through 3520 and inserting in lieu thereof:

"3518. Public disclosure and reporting.

"3519. Effect on existing laws and regulations.

"3520. Access to information.

"3521. Authorization of appropriations."

(b) **AUTHORITY OF ADMINISTRATOR.**—Chapter 35 of title 44, United States Code, is amended—

(1) in section 3504—

(A) in subsection (b)—

(i) in the first sentence by striking out "Director" and inserting in lieu thereof "Administrator"; and

(ii) in paragraph (5) by striking out "Director" and inserting in lieu thereof "Administrator";

(B) in subsection (c) by striking out "Director" and inserting in lieu thereof "Administrator";

(C) in subsection (e) by striking out "Director" and inserting in lieu thereof "Administrator";

(D) in subsection (f) by striking out "Director" and inserting in lieu thereof "Administrator"; and

(E) in subsection (g) by striking out "Director" and inserting in lieu thereof "Administrator";

(2) in section 3506(a) by striking out "Director" and inserting in lieu thereof "Administrator";

(3) in section 3507—

(A) in the section heading by striking out "Director" and inserting in lieu thereof "Administrator";

(B) in subsection (a)—

(i) in paragraph (1) by striking out "Director" and inserting in lieu thereof "Administrator";

(ii) in paragraph (2)(A) by striking out "Director" each place it appears and inserting in lieu thereof in each such place "Administrator"; and

(iii) in paragraph (3) by striking out "Director" each place it appears and inserting in lieu thereof in each such place "Administrator";

(C) in subsection (b) by striking out "Director" each place it appears and inserting in lieu thereof in each such place "Administrator";

(D) in subsection (c)—

(i) by striking out "Director" each place it appears and inserting in lieu thereof in each such place "Administrator";

(ii) by striking out "Director's" and inserting in lieu thereof "Administrator's"; and

(iii) by striking out "section 3504(h) or 3509" and inserting in lieu thereof "subsection (i) of this section or section 3509";

- (E) in subsection (e) by striking out "Director" each place it appears and inserting in lieu thereof in each such place "Administrator";
- (F) in subsection (f) by striking out "Director" and inserting in lieu thereof "Administrator"; and
- (G) in subsection (g) by striking out "Director" each place it appears and inserting in lieu thereof in each such place "Administrator";
- (4) in section 3508 by striking out "Director" each place it appears and inserting in lieu thereof in each such place "Administrator";
- (5) in section 3509 by striking out "Director" each place it appears and inserting in lieu thereof in each such place "Administrator";
- (6) in section 3510(a) by striking out "Director" and inserting in lieu thereof "Administrator";
- (7) in section 3512 by striking out "Director" and inserting in lieu thereof "Administrator";
- (8) in section 3513—
 - (A) in the heading by striking out "Director" and inserting in lieu thereof "Administrator";
 - (B) in subsection (a) by striking out "Director" each place it appears and inserting in lieu thereof in each such place "Administrator";
 - (C) in subsection (b) by striking out "Director" and inserting in lieu thereof "Administrator"; and
 - (D) in subsection (c)—
 - (i) by striking out "Director" and inserting in lieu thereof "Administrator"; and
 - (ii) by striking out "Director's" and inserting in lieu thereof "Administrators";
- (9) in section 3514(a)—
 - (A) in the first sentence by striking out "Director" each place it appears and inserting in lieu thereof in each such place "Administrator";
 - (B) in the second sentence by striking out "Director" and inserting in lieu thereof "Administrator";
 - (C) in paragraph (2) by striking out "Director" and inserting in lieu thereof "Administrator"; and
 - (D) in paragraph (3) by striking out "Director" and inserting in lieu thereof "Administrator";
- (10) in section 3515 by striking out "Director" each place it appears and inserting in lieu thereof in each such place "Administrator";
- (11) in section 3516 by striking out "Director" and inserting in lieu thereof "Administrator"; and
- (12) in section 3520 (as redesignated by section 112) by striking out "Director" and inserting in lieu thereof "Administrator".

TITLE II—COMMISSION ON FEDERAL INFORMATION

SEC. 201. FINDINGS.

The Congress finds that—

- (1) information is the infrastructure for decisionmaking and is vital to ensure—
 - (A) the efficient and effective operation of the Federal Government; and
 - (B) an informed citizenry which is the foundation of a democratic society;
- (2) the Federal Government is an important provider of information, both for its own use and for use by State and local governments, business, and the public;
- (3) the Federal information and statistical data system has not kept pace with changes in the United States economy and society and may lack the ability to provide relevant information for future decisions; and
- (4) there are problems of quality and timeliness with Federal information and statistical data.

SEC. 202. ESTABLISHMENT OF THE COMMISSION.

There is established a Commission on Federal Information (hereafter referred to as the "Commission").

SEC. 203. FUNCTIONS OF THE COMMISSION.

(a) **STUDY.**—The Commission shall study and investigate the long-term needs of the Federal Government relating to information gathering, processing, analysis and dissemination. The Commission shall consider—

(1) the contribution that Federal information and statistical data make to the general economic and social welfare, to State and local governments, and to the competitive position of the United States in the world economy;

(2) long term needs for information and statistical data that can and should be filled by the Federal Government;

(3) gaps in existing information and statistical data relative to such needs;

(4) other deficiencies in providing for needed information and statistical data, including problems of quality, timeliness, and the relevancy of such information;

(5) priorities for the collection of such information and statistical data in light of changes in the economy and society;

(6) organizational structures needed to—

(A) coordinate the decentralized Federal statistical system; and

(B) ensure ongoing improvements within the Federal statistical system and the Federal information system in light of changes in the economy and society; and

(7) such other matters the Commission determines appropriate.

(b) **FINAL REPORT.**—No later than 2 years after the date of the enactment of this Act, the Commission shall submit a final report to the Congress and the President containing a review of its findings and its recommendations for changes in statutes, policies, rules, regulations, procedures, and practices. The Commission may make such interim reports and recommendations as it determines advisable.

(c) **OFFICE OF MANAGEMENT AND BUDGET IMPLEMENTATION.**—Upon submission of the Commission's final report, the Office of Management and Budget, in coordination with the executive agencies, shall take action to—

(1) formulate the views of the executive agencies on the recommendations of the Commission;

(2) the extent practicable within the limits of authority and resources of each such agency, carry out the recommendations of the Commission in which such agencies concur; and

(3) propose legislation necessary to carry out other recommendations of the Commission in which such agencies concur.

(d) **OFFICE OF MANAGEMENT AND BUDGET REPORT.**—At least once every 6 months after the submission of the final report of the Commission, the Office of Management and Budget shall report to the Congress and the President on the status of actions taken or to be taken under this section. Within 2 years after the submission of the final report of the Commission, the Office of Management and Budget shall submit a final report of such actions to the President and the Congress.

SEC. 204. MEMBERSHIP OF THE COMMISSION.

(a) **MEMBERSHIP.**—The Commission shall be composed of 16 members, including—

(1) 2 Members of the Senate (who shall not be members of the same political party) appointed by the President of the Senate;

(2) 2 Members of the House of Representatives (who shall not be members of the same political party) appointed by the Speaker of the House of Representatives;

(3) the Director of the Office of Management and Budget and 2 other officials or employees of the executive branch of the Federal Government appointed by the President of the United States;

(4) 2 members from among officials of the State and local governments (who shall not be members of the same political party) appointed by the President of the United States; and

(5) 7 members from the public, including information users and providers, and other interested groups, appointed by the President of the United States without regard to political affiliation.

(b) **CHAIRMAN.**—The Commission shall select a Chairman and a Vice Chairman from among its members.

(c) **QUORUM.**—Eight members of the Commission shall constitute a quorum.

(d) **VACANCIES.**—Any vacancies in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(e) **INITIAL APPOINTMENTS.**—Initial appointment to the Commission shall be made within 120 days after the date of the enactment of this Act.

SEC. 205. TRAVEL EXPENSES.

While away from their homes or regular places of business in the performance of service for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons

employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

SEC. 206. POWERS OF THE COMMISSION.

(a) **HEARINGS.**—The Commission, or at its direction, any subcommittee or member thereof, may, for purposes of carrying out the provision of this title, hold such hearings, sit and act at such times and places, take such testimony and receive such evidence, as the Commission or such subcommittee or member may determine advisable.

(b) **PERSONNEL.**—The Commission may appoint and fix the compensation of personnel without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and such personnel may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not to exceed the maximum rate authorized by the General Schedule. In addition, the Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for the maximum rate authorized by the General Schedule.

(c) **CONSULTANTS.**—The Commission is authorized to negotiate and enter into contracts with private organizations and education institutions to carry out such studies and prepare such reports as the Commission determines are necessary in order to carry out its duties.

SEC. 207. COOPERATION WITH FEDERAL AGENCIES.

(a) **FURNISHING INFORMATION.**—Each department and agency of the Federal Government is authorized and directed to furnish to the Commission, upon requests made by the Chairman, such data, reports, and other information as the Commission determines necessary to carry out its functions under this title, except that information may be withheld if—

(1) the disclosure of which to the public is prohibited under any other provision of law or otherwise authorized to be withheld under other provision of law; or

(2) such information is specifically authorized under criteria established by statute or an Executive order not to be disclosed in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive order.

(b) **PROVISION OF SERVICES.**—The head of each department or agency of the Federal Government is authorized to provide to the Commission such services as the Commission requests on such basis, reimbursable or otherwise, as may be agreed between the department or agency and the Chairman or Vice Chairman of the Commission. All such requests shall be made by the Chairman or Vice Chairman of the Commission.

SEC. 208. TERMINATION OF THE COMMISSION.

One hundred and twenty days after the submission of the final report provided for in section 203, the Commission shall cease to exist.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this title.

TITLE III—MANAGEMENT OF PUBLIC RECORDS

SEC. 301. BINDING REGULATIONS CONCERNING PUBLIC RECORDS.

(a) **DISPOSAL OF RECORDS.**—Section 3302 of title 44, United States Code, is amended—

(1) in the first sentence by inserting “and binding on all Federal agencies” after “chapter”; and

(2) by redesignating paragraphs (1) through (3) as paragraphs (3) through (5), respectively, and inserting before such newly redesignated paragraph (3) the following new paragraphs:

“(1) standards for interpreting the definition of records under section 3301,

“(2) standards for establishment and maintenance of adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency for incorporation in recordkeeping requirements to be issued by heads of agencies,”.

(b) **ESTABLISHMENT OF PROGRAM OF MANAGEMENT.**—Section 3102(3) of title 44, United States Code, is amended by striking out “and 3101-3107, of this title and the regulations” and inserting in lieu thereof “3101-3107, and 3301-3314, of this title and the regulations and standards”.

(c) **EXAMINATION OF RECORDS FOR HISTORICAL PRESERVATION.**—(1) Section 2107 of title 44, United States Code, is amended—

(A) in the first sentence by inserting “(a)” before “When it appears”; and

(B) by adding at the end thereof the following new subsection:

“(b) Subject to the provisions of section 2906 of this title and notwithstanding any other provision of law, the Archivist or the designee of the Archivist may inspect or examine any record to determine if—

“(1) an agency is in compliance with the binding guidelines issued by the Archivist; and

“(2) such record has sufficient value to warrant the continued preservation by the United States Government.”

(2) Section 2906 of title 44, United States Code, is amended—

(A) in subsection (a)(1) by striking out the first sentence and inserting in lieu thereof: “In carrying out their respective duties and responsibilities under this chapter and under chapters 21, 31, 33, and 35 of this title, the Administrator of General Services and the Archivist (or the designee of either) may inspect the records or the records management practices and programs of any Federal agency for the purposes of rendering recommendations for the improvement of records management practices and programs. The Archivist (or a designee) may inspect the records of any Federal agency for the purpose of determining whether records in the custody of the agency have sufficient historical, administrative, legal, research or other value to warrant their further preservation by the Government.”;

(B) in subsection (a) by amending paragraph (2) to read as follows:

“(2) The Administrator and the Archivist shall promulgate regulations (subject to the approval of the President) to—

“(A) provide for the inspection of records, the use of which is restricted by law; and

“(B) provide that regulations authorizing and restricting the examination and use of such records applicable to the head of the custodial agency or to employees of that agency are applied in the same manner to the Archivist and the Administrator and to the employees of the National Archives and Records Administration and General Services Administration, respectively.”; and

(C) in subsection (b) by inserting “and in sections 2107 and 3303a of this title” after “subsection (a) of this section”.

(3) The first sentence of section 3303a(a) is amended to read as follows: “Subject to the limitations of section 2906 and notwithstanding any other provision of law, the Archivist shall examine the lists and schedules submitted under section 3303, and the Archivist or the designee of the Archivist may examine any record on such lists or schedule”.

SEC. 302. REPORTS ON ROUTINE USES.

Section 552a(r) of title 5, United States Code, is amended by striking out “or a matching program” and inserting in lieu thereof “a matching program, or a routine use”.

II. PURPOSE

S. 1742, as amended, would:

(1) Extend the authorization of appropriations for the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) for an additional four years, starting with \$5.5 million in the first year, \$6.5 million in the second year, \$7 million in the third year, and \$7 million in the fourth year;

(2) Further the purposes of the Paperwork Reduction Act, including those to continue paperwork reduction efforts in the Federal government;

(3) Set a national information resources management policy to integrate all information functions within a life-cycle management system in Federal agencies;

(4) Strengthen the information infrastructure and statistical database of the Federal government, including improving agency capabilities and public access to government information; and

(5) Improve the effectiveness and accountability of the Office of Information and Regulatory Affairs.

III. SUMMARY

STRENGTHENS PAPERWORK REDUCTION EFFORTS

S. 1742, as amended, strengthens paperwork reduction efforts. It would:

Reauthorize appropriations to carry out existing Federal information collection provisions of law for the initial review of collections.

Require the Office of Information and Regulatory Affairs (OIRA) to identify initiatives to eliminate any unnecessary paperwork burdens associated with individuals, business, educational institutions, state and local governments especially with respect to procurement and Federal grant programs, taxation, and international competitiveness. A report to Congress is required which specifically addresses the impact of burden reduction programs for those most heavily burdened.

Require that agency information collections are necessary for the proper performance of an agency's functions and are not unnecessarily burdensome; are not duplicative of information reasonably accessible to the agency; have practical utility; are written using plain and unambiguous terminology and are understandable to those who are to respond; and explain the need and ultimate use of the information to be collected, and the importance of an accurate and timely response.

IMPROVES INFORMATION RESOURCES MANAGEMENT

S. 1742, as amended, improves information resources management in the Federal government and the agencies. It would:

Create a new purpose which emphasizes the public benefit, quality, and use of government information.

Create a new definition for "managing information resources" emphasizing a comprehensive life-cycle approach to acquisition and use of information.

Strengthen agency responsibility and accountability in all areas of information resources management. Each agency head is directed to appoint a career Chief Information Resources Management Official with appropriate credentials, and each agency is required to establish an agency-wide IRM program, to provide formalized training programs for agency officials, and to integrate IRM programs and agency activities.

REAFFIRMS OIRA RESPONSIBILITY FOR POLICY GUIDANCE

S. 1742, as amended, reaffirms the Office of Information and Regulatory Affairs' responsibility for policy guidance. It would:

Require the OIRA Administrator to give balanced emphasis to all major information policy functions and to coordinate information policy with other central information agencies.

Emphasize the concept of "information resources management" to improve acquisition and use of information to meet information needs in government agencies and the public.

Require OIRA to develop policy, guidance, and standards to provide direction to agencies and to ensure the development of formalized training programs in Information Resources Management concepts for OMB staff and agency officials.

Increase the responsibility of the OIRA Administrator in the area of statistical policy in order to strengthen the leadership and coordination of our decentralized statistical system. Specifically, there is a new overall leadership role, a new international coordination role, and an emphasis on dissemination of statistics to the public.

Create a self-certification process for continuing information collection activities by Federal agencies which is designed to shift OMB's resources away from "routine, recurring, and regular" information collection approval, and to encourage agencies to assume responsibility for the quality and necessity of information programs. Importantly, this applies only to ongoing information collections which currently have to be submitted at the end of every three years for reapproval—and many argue is a time consuming rubber stamping function.

Emphasize OIRA's responsibility to provide guidance, not operational authority, for agency information dissemination activities.

Establish interagency working groups on information and statistical policy to coordinate agency activities and strengthen agency participation and responsibilities.

Re-orient the Federal Information Locator System, (FILS) so that it can better serve as a tool for agencies and the public in the information collection process.

Require that OIRA develop a plan to create a system to help the public to find Federal information dissemination products and services.

ESTABLISHES A COMMISSION ON FEDERAL INFORMATION

S. 1742, as amended, establishes a new Commission on Federal Information. The Commission would:

Examine the quality of the Federal information (including statistical) infrastructure. The functions of the Commission are: to look at the contribution of information to economic and social welfare and to competitiveness; to identify long-term information needs; to identify gaps and other problems in current information systems, especially with respect to quality, timeliness and relevancy; to set priorities for information in light of changes in the economy and society; and to look at how better to organize the information system for better coordination and to ensure that the system is capable of keeping up with the changes in the economy and society.

In part, these functions represent an update of the 1970 President's Commission on Federal Statistics.

Be structured after the Paperwork Commission. Membership includes two Senators (from different parties), two Representatives (from different parties), the OMB Director, two other Federal officials, two representatives of State and local government, and 7 members of the public. Except for the members of Congress and the OMB Director, the appointments are by the President. The Commission must report back its findings to Congress two years after enactment of the Act.

INCREASES PUBLIC PARTICIPATION AND OIRA ACCOUNTABILITY

S. 1742, as amended, increases public participation and accountability by the Office of Information and Regulatory Affairs. It would:

Require OIRA to maintain a public record of any information collection or regulatory review, which includes a written justification of any OIRA action.

Require that OIRA provide agencies with written materials sent to OMB and a summary of oral communications involving non-governmental representatives regarding a rulemaking activity and that OIRA invite agency heads to all scheduled meetings with non-governmental representatives.

Limit ex parte communication by OIRA officials on regulatory review activity with non-governmental representatives to OIRA Administrator and Deputy Administrator.

Limit OIRA regulatory review to 60 days, with a 30 day extension.

Strengthen consultation and create Advisory Committees on Information Policy and on Statistical Policy.

STRENGTHENS FEDERAL LEADERSHIP AND OVERSIGHT

S. 1742, as amended, strengthens Federal leadership and oversight in information policy and related subjects. It would:

Give responsibility and authority for functions of OIRA directly to the OIRA Administrator, a confirmable position since 1986. The OMB Director still specifically retains overall responsibility for OIRA activity.

Require professional credentials of the Administrator to be related to the enumerated functions of OIRA in the law.

Create a separate budget line item for OIRA which will establish stronger congressional oversight and accountability for OIRA.

Provide a four-year reauthorization.

IV. BACKGROUND AND NEED FOR LEGISLATION

The Paperwork Reduction Act of 1980 was important legislation designed to minimize the burden of Federal paperwork; to minimize the cost of collecting, maintaining, using and disseminating information; to maximize the usefulness of information collected by the Federal government; to coordinate, integrate and make uniform Federal information policies and practices; to ensure that automatic data processing and telecommunications technologies are acquired and used to improve service delivery and program

management and reduce the information processing burden for the Federal government and those who provide information to it; and to ensure that the collection, maintenance, use and dissemination of information is consistent with applicable laws relating to confidentiality.

To accomplish these purposes, the law established a government-wide management structure, creating in the Office of Management and Budget (OMB) an Office of Information and Regulatory Affairs (OIRA) with responsibility for providing government-wide leadership and coordination to address information problems. Additionally, it required Federal agencies to establish a focal point for improving information management and created a broad mandate for agencies to perform their information management in an efficient, effective, and economical manner.

The Paperwork Reduction Act was based on long and careful study of problems associated with the way government manages its information resources. During the late 1970's, the Commission on Federal Paperwork, the President's Federal Data Processing Reorganization Project, the General Accounting Office (GAO) and others recommended strengthening central agency leadership in managing information resources in Federal agencies.

The concept of "Information Resources Management" (IRM) was a key underpinning of the Act. While holding that an IRM approach would have significant potential for addressing a wide range of interrelated problems, proponents acknowledged that there was no central, cohesive body of doctrine, or even good advice or guidance to offer management on implementing IRM.

The Act required a government-wide program of information resources management. It made individual agencies responsible for implementing information resources management and devoting top level attention to it. To the central management agencies, principally OMB, it assigned the role of providing overall policy and oversight of evolving IRM practices and programs.

As a part of the reauthorization process, the Committee has carefully examined the Paperwork Reduction Act, its purposes and requirements. It has also reviewed all major studies of the implementation of the Act by OMB and by Federal agencies. Through a series of hearings and related meetings, the Committee has heard from a wide range of interested parties. The Committee is convinced that the basic purposes of the Act and the management framework it set in place are still appropriate and should be continued.

However, too little progress has been made in implementing key provisions of the original Act. OIRA's approach to information resources management has remained fragmented. OIRA has virtually ignored some responsibilities, concentrating on higher visibility problems such as paperwork control, regulatory review and technology acquisition. Federal agencies have made limited progress in implementing efficient and effective programs of information management. As a result, many of the problems the Act sought to remedy not only persist, but have grown more serious.

S. 1742, as amended, is designed to further the basic purposes of the original Act; to set national information resources management policy; to strengthen the information infrastructure and to improve

the implementation of information management in OMB and the agencies. S. 1742, as amended, is also intended to remedy specific problems and abuses uncovered in examining the record of Paperwork Reduction Act implementation.

BACKGROUND

It has been a stated policy of the Federal government to attempt to control Federal paperwork since the passage of the Federal Reports Act of 1942. The Reports Act provided statutory authority for regulating paperwork by authorizing the Director of the Bureau of the Budget "to coordinate Federal reporting services, to eliminate duplication and reduce the cost of such services, and to minimize the burdens of furnishing information to Federal agencies."

Despite the efforts of the Federal Reports Act, paperwork burdens continued to expand. In 1974 Congress responded to the continuing growth in government reports and forms with the passage of the Commission on Federal Paperwork, which was created by Public Law 93-556. The Commission was given the mandate to recommend changes in existing Federal reporting regulations and procedures. The Commission concluded its work in September 1977 by issuing 770 recommendations and publications of 36 separate reports. The Commission found "structural and procedural flaws" in the Federal Reports Act's clearance process "that preclude it from even being fully successful in controlling the total paperwork burden on the American public." As a result the Commission recommended enactment of new legislation to improve paperwork reduction efforts.

The Paperwork Reduction Act of 1980 (Public Law 96-511, chapter 35 of title 44, United States Code) went into effect on April 1, 1981. The Act's major objective was to reduce the information burden imposed on the public by the Federal government, while ensuring that the Federal agencies collect only as much information as they need and can use effectively. The Act set in place mechanisms intended to measure and manage the Federal government's information resources and established requirements for reducing the cost of collecting, managing, and disseminating information. Under the Act, the use of information technology to improve the efficiency of Federal programs and activities was also encouraged. In addition, the statistical policy function was assigned to the Director of the Office of Management and Budget (OMB).

When the authorization for appropriations to the Office of Information and Regulatory Affairs (OIRA) expired at the end of 1983, OIRA was funded on an annual basis from OMB's appropriations until a 1986 reauthorization contained in Title VIII of the Continuing Appropriations Act of Fiscal Year 1987 (Public Law 99-591). The 1986 amendment authorized separate funding for OIRA in the performance of its functions contained in the Paperwork Reduction Act, as amended, specifically \$5.5 million for each of the three fiscal years 1987 through 1989. All future Administrators of OIRA had to be appointed by the President and confirmed by the Senate. A new Information Technology Fund to be administered by GSA was also created, as well as the position of a Chief Statistician. New paperwork reduction goals were established by the 1986

amendments. In addition, the Federal Information Locator System (FILS) was required to be accessible to the public for locating government information.

PAPERWORK REDUCTION EFFORTS

The Committee focused its examination on concerns that despite significant efforts on the part of OMB and the agencies, current paperwork review processes are not preventing increases in paperwork burden on the business community and the public. There are continuing concerns about the usefulness of OMB's measure of burden reduction and its application. Since virtually everyone supports the goal of reducing and eliminating unnecessary paperwork, the Committee believes that more needs to be done to accomplish this intended goal, but that this should not be the only goal OMB has in reviewing information collection requests.

The Commission on Federal Paperwork found that "the total cost of Federal paperwork is huge; dollars spent on paperwork are difficult to determine. We estimate they may exceed \$100 billion a year, much of it necessary, some of it unnecessary." In an attempt to control these monetary costs and the "psychological costs—the anxiety, frustration, and anger that people experience when dealing with excessive paperwork and red tape, the Paperwork Reduction Act established central management controls and an accountability structure to eliminate unnecessary and wasteful demands for information by Federal agencies."

Specifically the Act created the Office of Information and Regulatory Affairs (OIRA) within the OMB and delegated to it the responsibility for reviewing of agency justifications of all reporting and recordkeeping requirements. Approving only those information collection activities which impose the least burden on the public that is practicable and appropriate. In 1980 Congress directed OMB to establish paperwork reduction goals, and in 1986 Congress statutorily set the burden reduction goals at 5 percent for each of four fiscal years beginning in FY 1987. There is substantial doubt about the effectiveness of these goals and the accuracy of the resulting reporting.

According to OMB the paperwork burden on the public has been reduced by 63 million hours in FY 1988 and more than 500 million hours since the enactment of the Act. These are admirable numbers but the Committee questions their accuracy. In hearings before the Committee, OMB admitted the figures are simply the accumulation of reports they received from the agencies and that they are unverified.

At the June 16, 1989 hearing held by the Subcommittee on Government Information and Regulation, Senator Bingaman, Chairman of the Subcommittee asked the OIRA Administrator, S. Jay Plager, about the numbers and Mr. Plager admitted, "I do not think there is any magic in the numbers, that is I do not think they represent reality in the sense of absolute numbers." (S. Hrg 101-166, page 53).

At the same hearings representatives of the business community suggested that while there had been a certain degree of success in reducing paperwork, they nevertheless felt that there had been a

dramatic increase in Federal paperwork burdens. For example, one advocate of strengthening OIRA's paperwork reduction responsibilities stated in testimony before the Subcommittee that the cost to the business sector of Federal paperwork is now more than three times what it was in 1978, "about \$330 billion annually".

While the Committee adheres to an analysis of the General Accounting Office (cited below) of a significantly smaller estimated cost of unnecessary paperwork burden on American businesses and organizations, it nonetheless finds that a strong and ongoing government-wide effort to reduce the burden of unnecessary government paperwork is essential. Furthermore, the Committee believes that the existing paperwork review process is not effective.

These conclusions are supported by the testimony of the General Accounting Office (GAO) and others. The GAO, in testimony before the Committee on February 21, 1990, stated that there has been little real paperwork burden change in recent years. The GAO cited their June 1989 report entitled, "Paperwork Reduction: Little Real Burden Change in Recent Years, in which they found that "with respect to changes in burden, our analyses show a 27-percent increase in reported burden hours (to 1.9 billion) between 1980 and 1987." The GAO found further as reported in its September 1989 report entitled: "Paperwork Reduction: Mixed Effects on Agency Decision Processes and Data Availability," that in its review of information collection requests submitted by the agencies, OMB has applied its own policies in an inconsistent manner, that "Informal procedures were used to determine if information requests were duplicative, written technical guidelines were rarely used, and criteria for determining priority of reviews varied among staff." The GAO also found that OMB staff received "little or no on-the-job training, and that most have minimal training in areas needed to judge the technical merits of an information collection request."

The GAO found that 95 percent of submissions were approved. Twelve percent of the research approvals were formally modified, while 8 percent of the non-research approvals were formally modified. An unknown percentage were informally modified in negotiations between OMB and the agencies. The GAO also found that many collection requests that were disapproved were accompanied by little or no explanation of the reasons for the action.

The GAO recommended that "the Director of OMB employ existing authority to delegate primary review responsibility to the senior officials within designated agencies that have demonstrated internal review capability;" that the Director develop "an on-going training program for its paperwork review staff to ensure that technical and nontechnical criteria are appropriately and consistently applied to submissions;" that the Director "augment OIRA's capacity to perform technical reviews of new and recurrent collections;" and, finally that OMB review "information collection requests concurrently with the public comment period for these requests."

The Committee endorses the recommendations of GAO. Further, the Committee believes that a renewed and unified effort by the Congress, the Executive Office of the President, and the Federal agencies is required to attack the paperwork burden faced by businesses, university researchers, and other individuals. S. 1742, as

amended, reflects a studied and constructive approach towards addressing this important problem.

The Committee also sees the important need to address the positive as well as the negative aspects of government information. It is important to keep in mind that all information collection in government is not bad, and in fact, much of it is absolutely vital to a well-run government. OIRA's review process has emphasized almost exclusively the burden of information collections. Little attention has been given to the value of Federal Information or to efforts to improve the quality and availability of information. The Committee recognizes the need for a better balance between efforts to minimize the burden of information collection and actions to maximize the benefits or value of information.

William Funk, in the "Harvard Journal of Legislation" "The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law." (Vol. 24, No. 1. Winter 1987. 1,116 puts it well:

[A]ltering the focus of paperwork review would provide an additional benefit. Under the Paperwork Reduction Act, OMB's review is only a brake on agencies' collections of information. There is no provision or authority for OMB to determine that additional information is necessary for the proper performance of an agency's functions. OMB's review focuses only on reducing costs, as opposed to increasing the net benefits . . . Today OMB clearly seeks to minimize regulatory burden, without placing much emphasis on increasing regulatory benefits, but this should not obscure the theoretical and practical value of a review which maximizes net benefits, a review that is not possible under the framework of the current Paperwork Reduction Act.

S. 1742, as amended, seeks to improve the law to address the benefits as well as the burdens of Federal information.

The Committee also sees the need to improve the quality of federal information. In the words of Dr. Michael Boskin, Chairman of the President's Council of Economic Advisors, when he testified at the May 15, 1989, hearing of the Subcommittee on Government Information and Regulation, "While good, better and more accurate information may not assure sound decisions in all cases, surely poor information can only lead to good decision-making by accident." Senator Bingaman, Chairman of the Subcommittee echoed these sentiments throughout the reauthorization proceedings. The Committee has a clear view that more should be done to improve the quality of Federal information.

FEDERAL INFORMATION POLICY

The ten year history of the implementation of the Paperwork Reduction Act reveals that there has been significant variance between the law and its implementation by OIRA. The Committee finds that more needs to be done to oversee OIRA and the agencies to ensure that the enumerated objectives and functions under the law are achieved. OIRA and the agencies must also pay greater attention to changing management needs in the age of electronic information technology.

The Committee also believes that more needs to be done to improve the management of federal information resources in both paper and electronic formats. While adhering to the framework of predecessor statutes, the Committee has assessed the nation's information policy with special concern over the design of the federal government's "information infrastructure." Information policy-makers must equip themselves with the knowledge necessary to achieve the highest quality and best use of government information. "Information Resources Management" (IRM) is the operative concept by which OIRA and the agencies should address information policy and functions. The concept emphasizes the importance of OIRA's undivided attention to all its enumerated functions under the law. In order to ensure the goal of improved OIRA management and adherence to its statutory mission, the Committee believes that an Administrator should be selected who has the background, education, and experience to implement adequately all information management functions required by law.

The Committee also feels that we must reverse the negative identity of government information that has been created by the use of a "paperwork reduction" law to manage valuable information resources. We must restore the principle that government information must be treated by policymakers and managers as a valuable resource, necessary to decision-making in government, enforcement of our nation's laws and government accountability. We should therefore establish affirmative principles regarding public access to government information. The ten-year history of the Paperwork Reduction Act has unfortunately reflected a pattern of "information reduction" in the name of efficiency, with insufficient regard for providing information necessary to ensure statutory compliance and law enforcement; information necessary for effective planning by agencies; and, the quality of federal data bases or federal statistics.

The Committee is also concerned with the apparent absence of any overall Government information policy or strategy, and believes there is a need for an information policy in the Federal Government that recognizes the comprehensive "life-cycle" management of information.

Information Resources Management is a recognized concept in government and the private sector today and the Congress recognized it as such when it defined the term in the 1986 PRA reauthorization legislation. However, the Committee finds that there is a lack of commitment and full understanding of the term and the potential benefits which can be derived from its wider use in government.

The Committee believes that government information should be a high priority as a valuable and useful resource to government and society. It should be managed in a coordinated and systematic manner based on established principles of information resources management. OIRA, in conjunction with other government entities with centralized information management responsibilities, should take leadership in developing coherent information policy which gives balanced and needed emphasis to all information functions. Federal agencies should establish parallel, but independent, information resources management programs.

The Committee also believes that OIRA's responsibility for agency information activities should be to ensure that they are well run, not to run them. OIRA's relationship to Federal agencies must be structured to provide policy guidance, not day-to-day approval or disapproval of agency information activities. Federal information resources management capabilities must be strengthened, and agencies must take greater responsibility for fulfilling the full range of information functions.

The Committee is also concerned that the Federal information and statistical data systems of the government have not kept pace with changes in our economy and society, and may lack the ability to provide relevant information for future decisions. An in-depth review is needed to ensure that there are on-going improvements within these important data systems.

S. 1742, as amended, would accomplish these goals and objectives.

REGULATORY REVIEW BY OIRA

Separate but related to the information resource management provisions of S. 1742, as amended, are its requirements concerning OIRA's regulatory review activities. Although OIRA was created by the Paperwork Reduction Act, nothing in the law authorizes the use of OIRA for purposes of substantive review of regulations. The limited scope of OIRA was reemphasized by Stuart Eizensat, former Domestic Policy Advisor to President Jimmy Carter, in his February 22, 1990 testimony before the Committee:

I don't believe we intended, when the Paperwork Reduction Act was passed, nor when we signed the Executive Order [E.O. 12174, November 3, 1979], that it would be the statutory basis for substantive OMB review of agency regulations. That was not the intent of the Paperwork Reduction Act. ["Reauthorization of OMB's Office of Information and Regulatory Affairs." Committee on Government Affairs. S. Hrg. 101-588, p. 70 (1990).]

Additionally, when the Carter Administration did address regulatory review [E.O. 12044] the role created for OMB was in the context of a relatively decentralized review process involving an inter-agency Regulatory Council and the Regulatory Analysis Review Group. This strategy was antithetical to that established subsequently by President Reagan under Executive Orders 12291 and 12498 which empowered OIRA to review, approve, disapprove, or modify rulemaking activities of federal agencies.

Several disturbing trends have resulted from OIRA's regulatory review activity pursuant to the Reagan Executive Orders. First, OIRA has been used primarily as a regulatory review office. Second, the OIRA mission of reducing federal paperwork and coordinating federal information policy has been severely weakened by the use of OIRA for regulatory review activities. Third, OIRA's review of regulations too often has been conducted in disregard of timeliness and mandates for federal regulations, and OIRA has conducted these activities without sufficient public disclosure. Fourth, OIRA Administrators have been selected with background and experience in regulatory review and not in the statutory infor-

mation management responsibilities. Finally, the Committee has found that OIRA has in several key instances breached the terms of its 1986 administrative guidelines on regulatory review established as the result of an informal agreement between then-OIRA Administrator Wendy Lee Gramm and members of the Governmental Affairs Committee.

OIRA's involvement in the federal rulemaking process has raised constitutional concerns about the President's authority to empower OMB to oversee agency rulemaking. The President is subject to the laws enacted by Congress, which have delegated rulemaking authority to respective agency heads through agency enabling statutes. Thus, any inherent power which the President may have over agency rulemaking activity is necessarily limited by the power delegated by Congress to the agency heads.

Even if one recognizes a constitutional basis for "executive power" in the President, Congress must similarly preserve its constitutional authority and ensure that presidential oversight of agencies operates in deference to the making and implementation of laws. Enforceability of this authority is key, and the Committee believes that legislation is necessary to achieve this goal. As stated by Professor Harold Bruff:

The informal agreement that OMB reached with its congressional Committees in 1986 did not establish a long term resolution of the issues that had arisen during the Reagan administration. A management program in the new administration will probably encounter strong pressure to reach a similar *modus vivendi* with the Committees. In that case, the primary advantages of a statute would be to give Congress an opportunity to decide which rulemaking programs should be exempt from review, and to enact more permanent controls and to enact them. ("Presidential Management of Agency Rulemaking," "George Washington Law Review," January 1989, Vol. 57, No. 3, 533, 792.)

The Committee believes that the record provides ample support for the value and necessity of integrating OIRA's regulatory review process with the Administrative Procedures Act's informal rulemaking procedures. Over eight years of experience under the Reagan executive orders on regulatory review has supplied considerable evidence that such review has a significant impact on the substance of proposed rules which agencies may ultimately publish for public comment, an impact that may effectively be irrevocable in view of OMB's substantial power stemming from its control over the federal budget. Such power may be brought to bear in the draft state, and in the "second bite" OIRA has before the rule can be published in final form. The Committee believes that this creates a two-tier rulemaking process which substantially diminishes the role of the public in having a meaningful opportunity to influence the formulation of agency policy. The Committee cannot emphasize enough that "sunshine" provisions are required to ameliorate this problem.

In addition to diminishing the value of public participation, off-the-record OMB and White House communications can be seen as

impairing the quality of judicial review. In *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971) the Supreme Court held that the Administrative Procedures Act's (APA) "arbitrary and capricious" standard of review requires courts to conduct a "searching and careful" inquiry based on "the full administrative record that was before the agency official at the time he made his decision." (401 U.S. at 416, 420). Off-the-record communications that nevertheless play a vital role in the agency's decision prevent courts from performing effectively the searching review contemplated by the Court in *Overton Park*.

Indeed, independent legal commentators have reached a similar conclusion on the importance of a comprehensive written record of OIRA's regulatory review activity for administrative and judicial purposes. As explained by Professors Joseph Cooper and William F. West:

The Reagan [executive] order's implications for the ability of administrative procedures and judicial review to serve as constraints on the abuse of bureaucratic discretion have been confirmed in practice. Though OMB review has taken place largely before the beginning of notice and comment proceedings on proposed rules, it has nonetheless undermined the goals of such proceedings . . . Similarly, OMB's leverage over the discretion of executive agencies and its veiled mode of operation have undermined the role of the judiciary in rulemaking. As noted earlier, the courts, in order to strengthen their oversight capabilities, have insisted that agencies justify their rules exclusively on the basis of the evidence contained in a record. As a corollary, they have frowned on *ex parte* contacts, especially when such communications serve as a conduit for private interests. However, OMB has adopted lax standards for revealing the character and extent of its contacts with both executive agencies and private parties (Presidential Management Report, 1987, pp. 33-35). As already indicated, it has operated largely through informal, off-the-record contacts. Indeed, it has not only kept much of its written communications confidential, but has usually preferred oral communications over the phone or through small staff conferences to written correspondence. As a result, judicial review, which hinges on a full and open record, has been subject to severe handicaps for rules in which OMB has taken a major interest. ("Presidential Power and Republican Government: The Theory and Practice of OMB Review of Agency Rules." *Journal of Politics*, Vol. 50, No. 4, November 1988, 864, 881.)

Furthermore, Supreme Court decisions regarding the authority of Congress to structure the administrative bureaucracy strongly support the constitutional validity of public disclosure and accountability provisions found in S. 1742, as amended, against a claim of encroachment on the constitutional functions of the President. Under the Court's decision in *Morrison v. Olson*, 108 S.Ct. 2597 (1988) and *Mistretta v. U.S.*, 109 S.Ct. 647 (1989), the burden is now on the President to demonstrate that Congress has either reas-

signed one of the core Executive functions to another branch, which might include an exercise of the function by Congress itself. Proof of encroachment or aggrandizement, normally shown as an incursion on a legally binding authority is required. But when the matter involves the congressional ordering of arrangements between agencies of shared responsibility a two-step test must be applied. The Executive must demonstrate that the challenged arrangement prevents the President from carrying out constitutionally assigned functions. If it does, then a determination must be made as to whether the congressional action is justified by an overriding need to accomplish some legitimate legislative goal.

Applying this test, the public disclosure and accountability requirements for the OIRA found in S. 1742, as amended, would appear to be constitutional. Congress is not shifting OIRA's regulatory review functions to another branch or even entity of government. Further, Congress has retained for itself no powers of supervision or control over the regulatory review activities of the OMB Director of OIRA Administrator. Finally, the rather substantial record of OIRA's abuse of the regulatory review process is likely to be seen as evidence of Congress' overriding need to accomplish the legitimate goal of safeguarding the fairness and integrity of agency decision-making through the informal rulemaking process.

COURT INTERPRETATION

During the ten-year history of the Paperwork Reduction Act and its implementation by the Office of Information and Regulatory Affairs, the federal judiciary has placed an important role in clarifying the scope of OIRA authority and the applicability of its paperwork clearance processes. For purposes of completeness these cases are summarized below.

OIRA authority to review agency information collections

Most significant has been the Supreme Court decision in *Dole v. U.S. Steelworkers of America*, 110 S.Ct. 929 (1990). In *Dole*, OIRA has asserted its information collection review authority over requirements that employers notify employees of hazardous workplace conditions. The Court, upholding the lower court's decision in *U.S. Steelworkers of America v. Pendergrass*, 855 F.2d 108 (3rd Cir. 1988) ruled that OIRA's authority to review agency information collection activities was limited to information collected by an agency or for an agency's purpose. The Court distinguished third-party requirements to provide the public with information from requirements that the public supply the government with information. The decision sets important limitations on OIRA under the Act, and substantiates reports and allegations of overreaching by OIRA. The Committee believes that Congress did not give OIRA carte blanche authority to intrude into the affairs of agencies and the public wherever it so desires. Furthermore, the Committee believes that the Congress should not expand OIRA's power to control regulation.

The *Dole* case also has important implications for information collection regulations involving discretionary agency requests and utilization of the data. In *Action Alliance of Senior Citizens of*

Philadelphia v. Bowen, 846 F.2d 1449 (D.C. Cir. 1988), the court recognized OMB's authority to review Department of Health and Human Services (HHS) Age Discrimination Act regulations. There, HHS required recipients of federal funds to complete a written "self-evaluation" a part of a compliance review or complaint investigation, but the actual collection of the data was discretionary for both HHS and the public.

OMB issuance of a control number

In the following cases, the courts have held that agency information collections do not require a control number during the conduct of an administrative action or investigation against specific individuals or entities. [Sec. 3518(c)(1)(B)(ii) exception] *Cameron v. IRS*, 773 F.2d 126 (1985), 593 F.Supp. 1540, 1556 (1984). *Synder v. IRS*, 596 F.Supp. 240 (1984). *U.S.C v. Partical Data, Inc.*, 634 F.Supp. 272 (N.D. Ill. 1986) [re: tax assessments, revenue collections, or summons for information pursuant to an Internal Revenue Service investigation] *Pierce v. Apple Valley, Inc.*, 597 F.Supp. 1480 (1984) [re: no defense to anti-fraud case or investigative methods by Department of Housing and Urban Development] *Navel Orange Administrative Committee v. Exeter Orange Co.*, 722 F.2d 449 (1983) [re: requirements to file reports to an administrative committee (established by Secretary of Agriculture) overseeing commodity marketing orders].

In the following case, it was determined that there is not a "legislative rules" exception to Federal Reports or the Paperwork Reduction Act. Such an exception would allow agencies to circumvent OMB review of burdensome information requirements merely by proposing them as rules published in the Code of Federal Regulations and inviting comment. *Action Alliance of Senior Citizens of Philadelphia v. Bowen*, 846 F.2d 1449 (D.C. Cir. 1988).

In the following cases, courts have determined that governmental entities which cannot be defined as an "agency" within the law are exempt from information collection review requirements. *Shane v. Buck*, 658 F.Supp. 908 (D.Utah 1985) [re: United States Postal Service is not within scope of definition of "agency" under Sec. 3502(1) or (10)]. *Kuzma v. United States Postal Service*, 798 F.2d 29 (1986) [re: United States Postal Service is exempt even though the Act is applicable to any "establishment in the executive branch of the government (Sec. 3502(1))"].

In the following case, it was determined that the failure of an agency to obtain OMB review and control number for information collection requirement can be raised as a defense to a criminal conviction for failure to comply with the requirement. *U.S. v. Smith*, 866 F.2d 1092 (9th Cir. 1989), [re: Holders of unpatented mining claims convicted for failure to file a "Plan of Operations" pursuant to the U.S. Forest Service requirements successfully raised the Paperwork Reduction Act as a defense to prosecution].

V. MAJOR PROVISIONS OF THE LEGISLATION

S. 1742, as amended, is designed to reduce the burden of government paperwork for businesses, educational institutions, and individuals; to improve the information infrastructure and statistical

database of the Federal government; to set a national information resources management policy, including the improvement of public access to government information; and to improve the efficiency and effectiveness of the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).

These issues were addressed in hearings held before the Committee on Governmental Affairs and before its Subcommittee on Government Information and Regulation. The bill reflects the many recommendations and ideas developed from the hearings, as well as in extensive meetings with such interested parties as: the Office of Management and Budget and agency officials, the General Accounting Office, Congressional staff, the business community, statisticians, scholars, librarians, and the public interest community.

The Federal Information Resources Management Act (S. 1742) establishes guidelines and specific requirements for the coordination and management of federal information activities. Following the framework of existing law (44 U.S.C. 3501) S. 1742 governs the coordination of information policy by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA); the fulfillment of a range of specific information functions by federal agencies; and related rights of the public.

PAPERWORK REDUCTION

S. 1742, as amended, reauthorizes the appropriations for the Office of Information and Regulatory Affairs (OIRA) to implement the Paperwork Reduction Act with emphasis on its original intents and purposes and increases efforts to reduce duplicative Federal information collection and minimize paperwork burden on the public. In addition, S. 1742, as amended, makes needed improvements in the information collection review process that respond to the problems found by the General Accounting Office and others. Additionally, S. 1742 seeks to create a better balance between performing the valuable task of eliminating unnecessary paperwork and recognizing the benefits of Federal information.

S. 1742, as amended, strengthens the goals of the Paperwork Reduction Act, instructing agencies to not just reduce, but to eliminate any unnecessary Federal paperwork burdens. It retains the purpose of the original Paperwork Reduction Act, to minimize the cost to the Federal government of collecting, maintaining, using, and disseminating information. The new Act recognizes that integrated information resources management is needed to improve the effectiveness of each and every component and responsibility of OIRA.

S. 1742, as amended, recognizes that a proactive effort is needed to reduce Federal paperwork burdens. It requires OIRA to identify initiatives to reduce paperwork burdens for those groups and sectors that are most heavily burdened. The Committee encourages OIRA to examine alternatives, testing different approaches on a small scale or pilot basis to determine how best to reduce the growing burden of paperwork.

AGENCY SELF-CERTIFICATION

Perhaps the most far reaching changes S. 1742, as amended, makes that are intended to have a greater impact on the reduction of federal paperwork burdens are those associated with the increased role for the Federal agencies in the collection review process, particularly for those collections which have already been approved once by OMB and come up for renewal. The Committee knows that an improved paperwork reduction effort cannot come from OMB alone. The agencies must become more involved in the process and the public must also be more involved. In order to accomplish these goals the bill creates a new information collection review process in the agency.

Agency self-certification is a new process designed to more extensively involve agencies and the public in the reapproval of previously approved information collections. It is important to note that it involves only continuing paperwork collections that have already been approved one or more times by OMB. It does not change the initial review process in any way. The certification process starts 90 days before expiration of the old OMB approval of the information collection. Collections are usually approved for a three year period. The agencies, after public notice and comment, including comments by OMB, would be required to certify to OMB that the collection is still necessary and that it continues to meet the paperwork review standards; that is, that the collection is still required by law, is not unnecessarily burdensome, and that it has practical utility. OMB then must approve the collection unless it decides to review the agency decision. For non-regulatory paperwork OMB can review the collection for any reason, and at any time. For regulatory paperwork, OMB can review the agency certification during the period 60 days prior to the expiration of the old OMB approval if OMB feels the agency decision and the agency's response to public comments, including any filed by OMB, are unreasonable or not sufficiently justified based on the record.

The agency self-certification process was devised to provide a more efficient process in OIRA while still preserving the benefit of periodic re-examination of the need for information collections. There has been concern that OMB has not paid much attention to recertifications. Many have suggested that OIRA needs a way to focus its limited resources on catching the "big fish" rather than re-reviewing "every fish in the stream." The self-certification process in S. 1742, as amended, involves the agencies to a larger extent in the review process and it eliminates OMB review of some of the routine, recurring collections which the Committee finds are not getting much OMB scrutiny anyway. It also creates a very open process for the public.

During debate on the bill, discussions occurred on whether the bill eliminated OMB's authority to review information collections. It does not. S. 1742, as amended, does not shift OIRA attention away from paperwork reduction in any way. It does not expand OIRA responsibilities nor does it limit OMB's review authority. The self-certification process creates a two tier review process much like the initial review process for information collections: one for regulatory paperwork and one for non-regulatory paperwork.

For those information collection requests that are not requirements (non-regulatory paperwork) the bill requires public notice and comment at the agency level. The bill also stipulates that an agency may not make a substantial modification to a collection. Unless the collection meets these criteria the collection must be submitted to OMB for review. The Committee believes that there must be a higher standard of review for regulatory paperwork in order to protect the integrity of the rulemaking process. There is concern that the Paperwork Reduction Act not be used in any manner to reopen a rulemaking proceeding through the disapproval of the paperwork that follows the rule.

S. 1742, as amended, does not upset the so-called three year sunset rule that is imposed on information collections. The bill expressly provides for the continuation of the sunset for all information collections so that collections will continue to be reviewed every three years at a minimum.

In establishing the new self-certification process the bill does not change the initial review process in any way. In fact, efforts to change the initial process by amending the so-called Kennedy Amendment (44 USC 3504(h)), which was added in floor action in 1980, (Congressional Record, November 19, 1980, pgs. S-30177-30179) and is the standard for initial review and approval of information collection requirements, were considered but no final action was taken by the Committee during debate on the bill. Thus, the Committee sees no need to change the standard of review in the Kennedy amendment, since it has been current law for 10 years and there is no evidence of any problem of interpretation or abuse. In a Congressional Research Service report to the Subcommittee on Government Information and Regulation by Mort Rosenberg ("Legal and Historical Precedent Supporting Public Disclosure and Accountability Provisions in S. 1742" in S. Hrg 101-588, p. 648) it is stated that "Section 3504 is a product of Senator Kennedy's unease with what he perceived to be an unwarranted broad grant of veto power over information collections regulations in the reported bill. His explanation of the purpose of his amendment provides strong argument that OMB's power to disapprove such regulations was limited to the confines of the notice and comment process. In Senator Kennedy's view, the defect with the reported bill was that it allowed OMB to veto agency regulations after they had been adopted by an agency pursuant to public notice and comment, without providing any procedural rights to either the public or to the agency involved." Those same concerns exist today. Not only has there been no demonstrated reason to change the Kennedy Amendment but the original reasons and concerns which led to its adoption in the first place still exist.

THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS

S. 1742, as amended, contains a number of provisions aimed at ensuring that the Office of Information and Regulatory Affairs (OIRA) fulfills its statutory mission. This mission is the coordination of federal information policy. OIRA is specifically responsible for overseeing information collection activities by federal agencies, and more generally for providing policy guidance on a variety of

information functions. Despite the clear statutory mission of OIRA, and its overarching responsibility to reduce the volume and burden of excessive paperwork, it has performed inadequately in these areas. Failure to implement the law has chiefly resulted from the creation of a separate set of OIRA functions and priorities by Executive Order for purposes of regulatory review; and, from the devotion of inadequate resources to its information resources management responsibilities. Legislation can only partially correct this problem. Committed and skilled OIRA and agency leadership is needed. Nonetheless, statutory direction is required.

First, the bill requires that the Administrator of OIRA, already subject to Presidential appointment and Senate confirmation, be someone whose professional qualifications are consistent with the statutory mission and enumerated functions of OIRA.

This change arose out of the Committee's concern that in the ten-year history of OIRA, its Administrators have been selected based on qualifications to direct a regulatory review process. Such selection has been made in disregard for OIRA's statutory mission to coordinate federal information policy and has highly politicized the activities of OIRA. The Committee believes that the primary purpose of the law—information policy coordination and information resources management—must be reflected in the selection of the Administrator. The highest management levels of OIRA must be comprised of individuals with experience in managing the enumerated functions of the law. As demonstrated by the history of OIRA, the appointment of an Administrator solely on the basis of expertise in regulatory policy, is not totally commensurate with the intent of Congress.

Second, the bill requires that OIRA be included as a separate line item within the budget of the Office of Management and Budget (OMB).

This change is necessary because the Committee viewed the ten-year history of OIRA as increasingly reducing the public availability of and access to government information. This concern was raised at both the Subcommittee and full Committee hearings on the reauthorization of OIRA. In testimony on behalf of the Association of Research Libraries (ARL), Dr. Kaye Gapen, Dean of Libraries, University of Wisconsin, stated that: "ARL views the Office of Management and Budget's information policies as a major negative force on the availability of government information to the public." Dr. Gapen continued to say that: "The result has been a chilling effect on efforts to improve information management practices throughout government to the detriment of public availability of government information." [S. Hrg. 101-166, Subcommittee on Government Information and Regulation, June 12, 1989.]

The Committee finds that OIRA has exerted its control over government information policy through a variety of directives and policies which include: OMB Circular A-130, "Management of Federal Information Resources," December 24, 1985 (revised); OMB Circular A-3 (revised), "Government Publications," May 2, 1985; OMB Circular A-76, "Performance of Commercial Activities," August 4, 1983.

While the Committee does not question the appropriateness of OIRA's centralized information management role, the Committee

finds that OIRA's control over government publications, in particular, illustrates OIRA's role in reducing the access and availability of public information. Beginning in 1981, OMB's authority was expanded by President Ronald Reagan to include review of government publications as part of the Administration's "war on waste." [See, Statement by President Ronald Reagan, Weekly Compilation of Presidential Documents, April 20, 1981; OMB Bulletin, "Elimination of Wasteful Spending on Government Periodicals, Pamphlets, and Audiovisual Products," April 21, 1981.]

Despite strong opposition from the nation's librarians and concerned Members of Congress (See, Statement of Representative Major R. Owens, "A New Attack on the Right to Know," Congressional Record, July 8, 1987, E2772), thousands of well known government titles were eliminated. In 1984, OMB itself issued a report announcing that 3,848 government publications had been eliminated. [See OMB, "Second Annual Report on Eliminations, Consolidations, and Cost Reductions of Government Publications," January 6, 1984.] Publications eliminated included those on a range of subjects of public concern as income taxes, drug abuse, automobile safety, and radioactive materials. [See, OMB, "List of Government Publications Terminated and Consolidated by Agency," 1982; "Government Restricting the Flow of Information to the Public," New York Times, November 12, 1982.]

OMB control over government publications has demonstrated its ability to block a direct channel of communication between the government and the public. However, OMB's control extends deeply into all the information functions of federal agencies, and has raised questions about the use of such controls to undercut information requirements central to implementation of many of our nation's laws. The impact of such controls has been manifested in a variety of ways. Examples include: Where federal financial assistance programs for minority college students have faltered because publications and other information about the programs have been eliminated or reduced. Where clean air and water standards, worker safety requirements, and civil rights protections have been weakened by the elimination of record keeping requirements. [See, "United States Government Information Policies: Views and Perspectives," McClure, Charles. Hernon, Peter. Relyea, Harold. Ablex Publishing Co. 1990.; "Government Secrecy: Decisions Without Democracy," People for the American Way, Washington, D.C. 1988. pp. 60-65] Where the initiation and effectiveness of the decennial census is delayed by criticism of approximately one-third of the questions. Where the need to improve trade data and strengthen economic indicators is ignored by disapproving surveys among U.S. industries. Where the accuracy of claims on food labels is weakened by the disapproval of proposals to tighten such regulations. [See, S. Hrg. 101-588, "Reauthorization of OMB's Office of Information and Regulatory Affairs, February 21, 22, 1990," Committee on Governmental Affairs, pp. 331-335] [See Also, "Secrecy," "Government Computer News," January 22, 1990, p. 70; "Information Drought: Next Crisis For The American Farmer," Nancy C. Kranich, "Library Journal," June 15, 1989; and "Less Access to Less Information by and about the U.S. Government," American Library Association, Washington, D.C. 1988.]

Third, the bill requires that the OIRA Administrator is directly responsible for administering the functions of the law. Previously, the OIRA Administrator's authority and responsibility was subject to delegation by the OMB Director. The OMB Director remains responsible and accountable for all requirements, functions, activities, and expenditures of OIRA.

This change arose for several reasons. The Committee believes that the continued delegation of the Administrator's authority from the OMB Director is inconsistent with earlier changes in law requiring Presidential appointment and confirmation by the Senate, instead of the appointment of the Administrator by the OMB Director. Furthermore, the Administrator should not be permitted to use the OMB Director as a shield against accountability and responsibility for fulfillment of OIRA's statutory mission.

Fourth, under the bill the Administrator is required to give balanced emphasis to all functions under the law.

This change arose from the concerns of the Committee, other Congressional Committees, and the General Accounting Office (GAO) over OIRA's well-established pattern of either ignoring, or giving insufficient emphasis to its statutory mission. OIRA has committed its resources unevenly in activities which range from its responsibilities to reduce duplicative and burdensome paperwork, to furtherance of federal statistical policy. This is not the first time the Committee has been concerned about OIRA's failure to perform all its responsibilities. In 1984, Senator John Danforth (R-MO), raised these very issues in the effort to reauthorize OIRA. ("Paperwork Reduction Act Amendments of 1984," Report of the Committee on Governmental Affairs, United States Senate, To Accompany S. 2433. Report 98-576. pp. 6,8). The Committee report concluded that:

1. "OIRA chose to dedicate its time and resources to certain policy functions, chiefly paperwork and regulatory review, to the detriment of the overall strategy of effectively integrating all information policy functions."

2. "ORIA's use of a large proportion of its resources to carry out regulatory reviews under Executive Order 12291 was viewed as unduly diminishing the resources available for OIRA's other responsibilities under the Act. This resource emphasis discouraged priority attention to the management strategy contemplated by the Act—i.e., integration of the several policy functions relating to information resources management."

Despite the pronounced terms in which these defects were stated, changes in the law were not enacted. By 1989 the GAO determined that the very same problems persisted. GAO cited OMB's own conservative estimate that at least 20-25% of OIRA's staff and resources were utilized for activities outside the scope of its authorizing law. It is essential to hold the Administrator directly responsible to ensure that OIRA comprehensively fulfills its statutory responsibilities.

Fifth, under the bill, the Administrator is required to coordinate development of federal information policies with other agencies

and government professionals who have information management responsibilities.

This change arose because of the Committee's concern over OIRA's history of making important decisions shaping federal information policy without considering the views of agencies or government professionals with shared information management responsibilities. Major information resource management responsibilities have been disregarded, and in certain areas OIRA has advanced information policy in a manner which has reduced the ability of agencies to fulfill statutory missions, enforce laws, conduct oversight, and remain accountable. Important public information programs and services have been eliminated without careful examination or planning; the federal statistical infrastructure has been weakened. Lastly, the public purpose and importance of government information has been ignored by such policies as OMB Circular A-130, Management of Federal Information Resources (50 Federal Register 52730-52751, December 24, 1985), which provides a general policy framework for the management of Federal Information Resources. S. 1742 underscores the importance of consultation. Examples of federal information management agencies which must be consulted for particular issues include: the National Archive and Records Administration; the National Institute of Standards and Technology; General Services Administration; Information Resources Management officers and professionals, and where relevant, public affairs or public information officers.

INFORMATION RESOURCES MANAGEMENT

Information resources management (IRM) is an evolving concept which emphasizes the importance of an integrated, coordinated approach to managing information. The Paperwork Commission identified IRM as a process to help solve the growing paperwork problem by managing the information needs of the Federal government in the least burdensome, most cost effective way. The Paperwork Reduction Act incorporated key aspects of the IRM concept, establishing a government-wide management structure assigning OMB responsibility for developing IRM policy and guidance and Federal agencies responsibility for implementing IRM.

Despite its central importance, until very recently, IRM has received little attention either in OMB or in most agencies. However, the Committee is convinced of the wisdom of the IRM approach originally articulated by the Paperwork Commission. To achieve the purposes of the Paperwork Reduction Act will require, the Committee believes, a coordinated, integrated approach to information policy and an emphasis on managing information resources. S.1742, as amended, contains a number of provisions designed to emphasize the importance of IRM and encourage development and wider implementation of IRM approaches.

First, S. 1742, as amended, is titled "Federal Information Resources Management Act." The Committee believes that this title more closely reflects the full range of purposes contained in the original legislation.

Second, S.1742, as amended, explicitly states that a major purpose of the legislation is to emphasize Federal information re-

sources management as a comprehensive and integrated process for improving the efficiency and effectiveness of government information activities.

While the Paperwork Reduction Act was based on the Paperwork Commission's work, the initial legislation did not spell out the specifics of the IRM approach as envisioned by the Commission. This new provision makes clear that the purposes of the Act include fostering the kind of comprehensive, integrated approach to information management reflected in evolving IRM concepts.

Relatedly, S. 1742, as amended, includes a new set of definitions of information resources management and the related concepts of information resources, information systems and information technology. Specifically, IRM is a complex term which encompasses the process of defining information needs to accomplish agency mission; of managing information resources to efficiently, economically and equitably meet defined information needs; and integrating the skills of individuals in various information functions. Additionally, the process extends through all stages of information collection, use and disposition and includes the management activities of planning, budgeting, organizing, directing, controlling and evaluating the use of information.

IRM was not defined in the original Paperwork Reduction Act although both the House and Senate reports on the legislation did contain definitions. The 1986 amendments to the Act added a definition of IRM in response to concern about how well the concept was understood and implemented. Since that time, a growing number of studies have indicated the need for more comprehensive definition and more explicit statement of what is included.

As Ann Bishop, Philip Doty and Charles McClure explain in "Federal Information Resources Management: A Policy Review and Assessment," in "Proceedings of the American Society for Information Science Annual Conference, 1989." (Medford, N.J.: Learned Information) evolving definitions emphasize three basic concepts of IRM: the development of organizational information policies and the integration of them with organizational activities; the need for IRM to support organizational goals; and the fact that information is not free but has costs and values like other resources and, therefore, must be managed like any other resource. The revised definitions included in S. 1742 reflect these points.

In its comments on S. 1742, introduced as part of the written record of the Feb. 21-22, 1990 hearing of this Committee (S. Hrg 101-588, p. 735), the Office of Technology Assessment observes that while the definitions in S. 1742 are lengthy and detailed, earlier OTA studies have found that Federal agency managers need clearer descriptions of IRM. OTA also points out that the new definitions which emphasize the "life cycle" approach to information management and include technological, financial, and human resources, as well as the information itself, are consistent with needs identified by OTA.

S. 1742, as amended, emphasizes OIRA responsibility for developing integrated IRM policy and guidance with input from the Federal agencies. It also mandates that the OIRA Administrator ensure the development of training in IRM concepts both for OIRA staff and for agency personnel.

These added provisions speak to the need identified particularly by those who have studied the implementation of IRM for continuing development of policy and guidance. OIRA is expected to provide the leadership for further policy development. The Committee expects that OIRA will coordinate with other central management agencies in identifying governmentwide problems and developing solutions in IRM. GAO reported in "Managing the Government: Revised Approach Could Improve OMB's Effectiveness" that OMB needs to revise its approach to providing government-wide management improvement leadership. Specifically, it recommended that OMB needs to better understand the problems agencies have and what it takes to solve them; to work closer with the agencies to develop a longer term management strategy; and to enlist the commitment of agency executives rather than imposing change or attempting to manage agency operations. The Committee is persuaded that these findings also apply to OIRA's role in improving the management of information resources.

S. 1742, as amended, contains several provisions designed to ensure that Federal agencies focus on improving information resources management. It requires the appointment of a career Chief Information Resources Management official who is well qualified through experience or training to carry out all the programs and activities authorized by this law. Each agency is required to establish an agency-wide IRM program; to provide formal training on IRM concepts and educate program officials about IRM as a managerial discipline. Agency responsibilities for identifying information needs, for developing information systems, for maintaining inventories of information resources, for issuing IRM plans, and for establishing a system for dissemination of information, regardless of format are spelled out.

This set of provisions, incorporating the new definitions of IRM and related terms, is intended to provide more specific direction to all Federal agencies. Studies by academics, by GAO, and others continue to show that IRM is poorly understood and implemented by Federal IRM managers and that it has not adequately increased the effectiveness of information and information system management. There is agreement that the original vision of IRM still holds significant potential and that what is needed is renewed commitment and emphasis on implementing IRM in Federal agencies to maximize the benefits and value of Federal information for all its users.

INFORMATION DISSEMINATION

Information dissemination is an existing function of the law, however, greater specificity is essential to guide OIRA, the agencies, and the public. S. 1742, as amended, establishes, for the first time, a statutory framework for the OIRA Administrator to develop dissemination policy guidance and for agency heads to carry out information dissemination activities. With regard to OIRA, the bill directs the Administrator to develop policy guidelines, promote policy research and development, maintain systematic oversight, and coordinate the development of uniform technical standards. The role of OIRA remains a subject of continuing debate, with

many parties acknowledging the need for a centralized OIRA policy function but remaining concerned about excessive OIRA influence and the history of weak checks and balances on OIRA policy development.

First, the bill requires that information dissemination policy developed by OIRA or any federal agency applies to all government publications in any format (i.e. paper, compact disc, on-line data, etc.).

This change arose because the Committee recognized that the federal government is operating in the electronic information age, and is utilizing alternative information formats on a rapidly increasing basis. The law has not kept pace with these changes. The federal information infrastructure requires the development of information policies which take into account the advantages and consequences of advances in information technology.

Second, the bill requires the Administrator and agency heads to strengthen public access to government information.

This change arose because the Committee viewed the ten-year history of OIRA as increasingly chilling public access and use of government information. This issue was raised at both the Subcommittee and full Committee hearings. In particular, D. Kaye Gapen, Dean of Libraries, University of Wisconsin, representing the Association of Research Libraries, at the June 12, 1989 subcommittee hearing (S. Hrg. 101-166) stated that: "ARL views the Office of Management and Budget's information policies as a major negative force on the availability of government information to the public." She went on to say: "The result has been a chilling effect on efforts to improve information management practices throughout government to the detriment of public availability of government information."

While different types of government information may require different kinds of management, no government information is exempt from the basic requirement that it serve a public purpose. In other laws, this fundamental requirement is affirmed by the prohibition against government copyright, and by the public access mandates included in the Freedom of Information Act, the Administrative Procedures Act, and the government in the Sunshine Act. However, despite the fact that Chapter 35 of title 44 establishes responsibility for the "Coordination of Federal Information Policy," by OIRA and agencies it does not adequately reflect affirmative principles of public access and use of government information.

The bill requires that strengthening public access to government information shall include making products and services available on a timely, equitable, and equal basis to all persons. In this context, timely means without undue delay following publication or request; equitable means at a fair cost; and equal means nonexclusive and nondiscriminatory.

The bill also seeks to encourage a diversity of government and non-government sources of government information. This point bears greater discussion and clarification. Put simply, a diversity of sources means having government, non-governmental public entities, and the private sector provide government information—in whole or in part—to the public. Such a diversity of sources is believed the best way to ensure the flow of information in our society.

A central tension in this process involves the assumption that government provides certain services regardless of the vagaries of demand and the "marketplace." The Committee believes that it is important in this regard to recognize that market-driven private sector initiatives often provide needed creativity and flexibility which government cannot. The Committee cannot provide a single method or solution to ease this tension, but it does encourage agencies, in determining whether and how to disseminate information, to take advantage of the marketplace, but not sacrifice the public purposes of their statutory missions. The use of the word diversity is meant to reflect the open-eyed attention to different means of dissemination.

Third, the bill requires the Administrator to promote policy research and development in the area of information dissemination.

This change arose from the concern of the Committee over the extent of OIRA staff resources, knowledge, and professionalism in the development of information dissemination policy. OIRA is responsible for providing agencies with information dissemination policy guidance. Programmatic decision making authority rests with the agency head. The guidance provided by OIRA to agency heads and information resource management officials should reflect an ongoing effort to broaden its foundation of knowledge in information dissemination policy ranging from access to technology.

Fourth, the bill requires the Administrator to establish systematic oversight procedures in the area of information dissemination.

This change reflects the Committee's belief that OIRA has neglected the central mission of its enabling law: "coordination of federal information policy." Examples of OIRA's failure to coordinate include preoccupation of many agency information resource managers with automated data processing responsibilities, the lack of standards for new information dissemination products and services, issues of proprietary rights and licensing of government information, changes in information technology, the increase in "fugitive document" publishing and dissemination by agencies, and more. Therefore, the OIRA Administrator must work to coordinate on going government information policy with agencies including the National Institute of Standards and Technology; the General Services Administration; and other agencies and professionals with centralized information management responsibilities.

Fifth, the bill requires that guidance be developed by the Administrator to indicate that the head of each agency bears primary responsibility for the management of federal information resources.

This change arose from the Committee's concern that OIRA has sought to substitute its own judgment and policy for the information dissemination authority of agency heads and officials. Final authority for agency information dissemination programs and activities rest with each agency head, not with OIRA or OMB. A dividing line exists between the OIRA policy guidance function and the agency head's decision-making responsibility. The requirements of OMB Circular A-130 (December 31, 1985) illustrate how OIRA has crossed the dividing line in striving to set agency information dissemination policy. The proposed "Second Advance Notice to Re-develop OMB Circular A-130" (June 5, 1989) reflects in tone and

content, OIRA's return to the appropriate side of the dividing line. However, the Committee believes it is necessary to commit a positive and well balanced dissemination policy to statute.

Sixth, the bill requires that OIRA guidance to agencies regarding public information dissemination functions include the consideration of several factors. Is the dissemination activity required in law? Is it necessary for the proper performance of agency functions? Would it assist in the public oversight of agency operations or promote the general social or economic welfare of the United States? Is an equivalent information product or service available from a public or private source, which reasonably achieves the dissemination objectives of the agency product or service?

These changes arose from the Committee's concern that agencies improve the development and management of information dissemination policies and systems. Importantly, the Committee believes that the list of considerations must be weighed individually, not cumulatively. The Committee does not intend these factors to be part of an equation or a strict balancing test. However, the Committee does expect agencies to consider, and be prepared to justify these considerations in the performance of their information dissemination activities.

In the context of information dissemination management, the Committee intends these provisions to, first, assist agency managers in establishing the statutory or programmatic authority for expanding its dissemination activities, and secondly, to then determine how to best achieve its objectives. In particular, the Committee believes that agency dissemination activities in the electronic age have too often been pursued without regard for uniform technical standards; increased cost; long term planning; and the need for greater expertise and knowledge by information resource management officials. Internal agency objectives have been pursued without regard for whether the activity is authorized in law, or necessary and proper within the agency's mission.

Coordination of federal dissemination activity requires improved guidance from OIRA and improved management by each agency. Agency consideration of the above factors should result in a record within each agency and serve, with other studies, research, or materials, as the basis for informed decision-making by agency heads and oversight by Congress. The Committee believes that agencies should stay abreast of other related information products and services—whether offered by government agencies, commercial vendors, or not-for-profit organizations—and factor these alternatives into agency dissemination planning and decision making.

The requirement that agencies consider the existence of equivalent information products or services is a change which the Committee believes serves two important functions. First, agency heads and information resource managers must make decisions based on more thorough knowledge of "state of the art" information products and services. As reported by the GAO and others, the federal government has been eclipsed as a proving ground for "state of the art" information technology. Determining the existence of equivalent products or services is intended, in part, to equip agency officials with the knowledge—unobtainable by looking only within the

government—necessary for the fulfillment of information dissemination responsibilities.

In addition, just as the Committee believes in the value of a diversity of sources of government information, it is sound public policy for agencies to consider whether its dissemination requirements are being adequately fulfilled by other agencies, or by non-government entities. However, the Committee rejects the simplistic test of OMB Circular A-130 which demanded that agencies refrain from disseminating if anyone, particularly in the private sector would provide similar information. This policy served only to eliminate the discretion and the authority of agencies to determine the necessity of performing their own governmental functions.

Seventh, the bill requires the agencies to provide the public with advance notice when the agency initiates, terminates, or significantly modifies public information products or services.

This change arose from the Committee's concern that the user populations of government information products and services be given meaningful notice of changes. Such notice will provide those who rely on such information with the opportunity to provide valuable input to the agencies, as well as be better prepared for potential changes. In some cases, for example, the change from one publication format to another may require significant changes in costs and staff training. In other instances, it may involve learning of the expansion, merger, or even the termination of government databases. Meaningful notice to the public will result in a public comment period of commensurate value to agencies. Such notice should include the Federal Register, as well as the public and trade press, and professional organizations.

Eighth, the bill requires agencies to provide the Superintendent of Documents for distribution to the Federal Depository Library Program all publications required by Chapter 19 of Title 44.

This change arose from the Committee's belief in the important longstanding role of the Federal Depository Library Program in facilitating public access to government information. This provision is intended to preserve the integrity of the Federal Depository Library System; ensure that government publications are accounted for through the Superintendent of Documents; and to prevent the growth of "fugitive document" publication and dissemination in agencies. While S. 1742 defers to Title 44 for a definition of the publications to be distributed in the depository program, the bill expressly includes electronic formats within the scope of such publications.

FEDERAL INFORMATION LOCATOR SYSTEM

The Paperwork Reduction Act of 1980 required that OIRA develop a Federal Information Locator System (FILS) to provide a systematic resource for locating government information, improving internal agency information resources management, and indentifying duplicative information collections. As implemented by OIRA, FILS has been described almost exclusively as a method to detect paperwork duplication.

While the aim of FILS has been to have consistent data in one system on every question asked by the Federal government on

every information collection instrument in a manner that can be cross-referenced, this is a difficult technical task. Additionally, OIRA has become convinced that there is actually relatively little duplication that would be caught by such a system. Not that there are not overlapping collections, or needless questions, or overly burdensome collections, but a single automated system cannot be developed that can identify such duplication. Despite considerable resources devoted to the development and operation of FILS, OIRA can not identify major uses of the FILS which have resulted in reducing unnecessary or duplicative paperwork.

S. 1742, as amended, mandates a new look at FILS. It requires OIRA to ensure the establishment of a FILS which will be a comprehensive inventory of all information collection requests and also serve to assist agencies and the public in locating public information. OIRA must, in consultation with other agencies, determine the optimal composition of the system and report to Congress within one year on the development and implementation of the system.

Improvements in information technology have made the prospects of automated information directories much more realistic. It is no longer far fetched to begin planning for a system or set of systems that would allow agencies as well as the public to have varying degrees of access to information about government information holdings.

The Committee recognizes the potential of a workable FILS and the possibility to achieving such potential in the near future. Accordingly, the Committee envisions FILS will have two basic purposes.

First, FILS should help agencies and the public identify information collection activities conducted by agencies. It is expected that data about burdens, respondents, and types of information collected could be identified through FILS. Agency personnel, IRM and program officials, along with the public should be able to obtain the answers to commonly asked questions about government paperwork. For example, FILS should help businesses better determine types of information requirements expected of them when entering into new business ventures, applying for a federal grant, or bidding for government contract.

Second, FILS should assist agencies and the public in locating public information systems, products, and services. Existing technology provides opportunities to make information available in ways that enhance effective agency management and facilitate identification and use by the public. Additionally, the relevant technologies are evolving rapidly. The Committee believes that OIRA should lead an effort to rethink and redesign the OIRA to maximize its utility and take advantage of evolving technology.

STATISTICAL POLICY

Statistical policy and coordination functions are a major area of responsibility as assigned to OIRA under existing law. S. 1742, as amended, continues and strengthens the requirements for OIRA leadership of the Federal statistical system and adds a number of new provisions. These provisions reflect the Committee's view of

the importance of improving central leadership and coordination of statistical programs. Additionally, while there is continuing concern about OIRA's inadequate attention to statistical policy functions in the past, the Committee believes that these functions are an integral part of general information policy and should remain in OIRA.

The Committee is convinced that much more needs to be done to address the growing problems in the Federal statistical system. It has found that the Federal statistical system has not kept up with the changing nature of the U.S. and global economies. Statistical priorities and programs need to be re-examined and updated in light of rapidly changing economic, technological, social, and political conditions.

To address these concerns, S. 1742, as amended, amplifies OIRA's existing statistical responsibilities and includes other provisions designed to improve the Federal statistical system and information infrastructure.

First, the bill requires OIRA to give balanced emphasis to all major information policy functions, specifically including statistics. The Committee intends that OIRA devote an appropriate amount of its staff resources to statistical policy development and leadership.

Second, S. 1742, as amended, strengthens the statistical policy mandate by explicitly requiring OIRA to coordinate and provide leadership for the development of the federal statistical system; to develop a summary and analysis of allocations for statistical programs that would be submitted as part of the President's budget; and to ensure that data are made available to the public in a timely manner.

These provisions require that OIRA adopt a proactive approach to statistical leadership. The Committee expects that OIRA, and in particular the Chief Statistician, will provide leadership in identifying statistical priorities and in identifying and defending the budget requirements of Federal statistical programs. Additionally, OIRA should take an active role in developing statistical standards and guidelines to assist Federal agencies in the development and implementation of statistical programs. Statistical policy must address issues related to information collection, use and dissemination.

Third, the bill establishes an ongoing Advisory Committee on Statistical Policy, and an interagency working group headed by the chief statistician.

In a decentralized statistical system which serves the information needs of government, business, academia, and the public, ongoing coordination and consultation with interested and affected parties is essential. These new provisions establish advisory groups to ensure that OIRA has institutionalized channels of communication with the relevant parties as it develops and implements government-wide statistical policy.

REGULATORY REVIEW

OIRA is not authorized by statute to engage in the review of regulations proposed by federal agencies. However, it is directed to do

so by Executive Orders 12291 and 12498, issued by President Reagan. Without challenging OIRA's ability to engage in regulatory review activity, the Committee has two principal concerns. The first, expressed earlier, is that OIRA's preoccupation with regulatory review has resulted in the neglect of its statutory responsibilities. The second, is that OIRA's regulatory review activity has resulted in delay and substantive interference with agency rulemaking. The Committee believes OIRA's pattern of delay and interference has weakened the integrity of the federal rulemaking process and undercut the statutory mandates and missions of federal agencies. This has resulted in a two-tier rulemaking process in which the agencies are governed by the Administrative Procedures Act and other laws, while OMB imposes its will under the rubric of "consistent with Presidential policy." The Committee believes that the provisions of the bill are necessary to ensure that OIRA's involvement in the federal rulemaking process is in accordance with the standards of openness, public accountability, and timeliness required of agencies.

First the bill requires the Administrator to establish and maintain a public file for each agency activity under review in the public reading room of OIRA. Individual files must be immediately created when OIRA receives written material, regardless of format, which initiates a review of agency activity. Additional materials related to the review of a regulation must be included in the file no later than five calendar days after received by OIRA.

This change resulted from the Committee's belief that enforceable requirements for timely and systematic public disclosure are necessitated by OIRA's involvement in federal rulemaking. The term "regardless of format" means whether the information is written on paper, contained in a computer disk, placed on a tape, or reduced to any other form, electronic or otherwise. The Committee believes that the contemporaneous disclosure requirements are essential to protect the needs of the public, the Congress, the courts and the agencies. Such information will be useful to the public during requisite public comment periods; to the Congress in monitoring statutory compliance; to the courts in having a more complete written record; and the agencies in seeking to comply with statutory mandates and time limits.

The bill exempts from disclosure communications between OIRA and the Executive Office of the President, but it does require disclosure of written communications related to the review of a rulemaking created and transmitted within OIRA.

This change arose from the Committee's desire to distinguish between privileged communications within the Executive Office of the President and written materials which serve as the basis for OIRA action concerning a proposed or existing rule. The provision requiring disclosure of internal OIRA communications is specifically intended to create a public record of memoranda, studies, surveys, policy analyses, research findings, or other substantive materials relied upon by the OIRA Administrator, Deputy Administrator, or staff in expressing OIRA's views, recommendations, or decisions to agencies.

The bill restricts ex parte communications regarding regulatory review activity at OIRA to the OIRA Administrator and the Deputy Administrator regarding regulatory review activity.

This change arose from the Committee's belief that OIRA's own standard for review, "consistent with Presidential policy," is by definition a matter of internal policy discussions, not requiring independent fact finding. To the extent that those outside of government are needed for expertise or recommendations in the development of a rule, there is ample opportunity for such input during the agency's preparatory work, and during the public comment period. For OIRA to do otherwise is to promote itself as a forum for "special pleaders" who can appeal to OIRA in an undocumented "off-the-record" manner. As demonstrated in important instances during the ten-year history of OIRA, such discussions and meetings only serve to undercut the mandates and responsiveness of federal agencies. To the extent that ex parte communications may be necessary, the bill permits the OIRA Administrator and the Deputy Administrator to do so. In the event there is an Acting Administrator who is not already the Deputy Administrator, it is assumed that the all authorities of the Administrator, including ex parte communication, can be exercised by the Acting Administrator. The bill does not provide for delegation of this authority to lower level OIRA officials because of the potential for abuse.

The bill requires specific time limits for OIRA's review of agency rulemaking activity.

This change results from the Committee's strong belief in the need for statutory time limits of review to prevent delay in issuance of statutory, as well as court ordered, federal regulations. OIRA's long record of delays has frustrated and complicated agency compliance with statutory and judicial deadlines for issuing rules. The Committee expects OIRA and the agencies to adhere strictly to the language of the law. In the event that OIRA does not comply with the statutory time limits for review, the agency should consider the review complete and proceed with rule-making.

COMMISSION ON FEDERAL INFORMATION

S. 1742, as amended, establishes a Commission on Federal Information to look at the broad question of the health of the Federal information, including statistical, system. The functions of the Commission are to look at the contribution of information to economic and social welfare and to competitiveness, to identify long term information needs, to identify gaps and other problems in the current system especially with respect to quality, timeliness and relevancy, to set priorities for information in light of changes in the economy and society, and to look at how better to organize the information system for better coordination and to ensure that the system is capable of keeping up with changes in the economy and society. In part, these functions represent an update of the 1970 President's Commission on Federal Statistics.

The structure of the Commission is patterned after the Federal Paperwork Commission. Membership includes two Senators (from different parties), two Representatives (from different parties), the OMB Director, two other Federal officials, two representatives of

State and local government, and 7 members of the public. Except for the members of Congress and the OMB Director, the appointments are by the President. The Commission must report back its findings to Congress by July 1991, before authorization for OIRA expires.

That our federal statistical system is in need of an overhaul is clear. One example of the problem is our economic statistics. In 1989, the Office of Technology Assessment, at the request of Senator Bingaman, looked into the question of the adequacy of our economic statistics, especially in light of the ongoing changes in the U.S. and global economies. Their report, "Statistical Needs for a Changing U.S. Economy" demonstrates how staggering defects in the existing statistical system can hinder the understanding of key economic issues. It also highlights the ways in which better management and coordination of existing statistical agencies can lead to improvements in the quality of the data.

The report points out that the problem with data stems from the dynamic nature of our economy. Although U.S. statistics are very good, the domestic economy is changing so rapidly and in so many different directions that keeping track of our statistical needs is becoming more and more difficult.

Recently, an example came to the attention of the Committee of how outdated statistics can lead to distorted policy analysis. Congress and the Administration recently debated and renewed voluntary restraint agreements (VRAs) of steel imports. In May of 1989, the U.S. International Trade Commission (ITC) published a study on the effects of such VRAs on steel users. However, the ITC's analysis was based on the 1977 input-output table of the U.S. economy instead of the 1982 version which indicates that steel input required in many manufacturing processes has declined significantly. Thus, according to a Congressional Research Service report, "the USITC utilized information for its efforts that may have been valid in the 1970's but not for the mid-1980's. * * * The use of the 1977 input-output table could result in a substantial overstatement of the effects of the VRAs on the U.S. economy.

Another example is the increasing number of significant revisions to many of our basic economic statistics. For example, in 1989, the number of new jobs created was drastically revised in April, in May and then again in June. May's figures for retail sales were revised from a preliminary announcement of a decline to a healthy growth. June's data for new orders for durable goods was also significantly revised as was the third quarter's GNP data. While revisions are a normal part of updating statistics, these examples are of such a magnitude that they call into question their basic soundness. We must have accurate data for decision making by both business and government. Important policy decisions of the Federal Reserve Bank and investment and production decisions of industry are determined by this data. Such large revisions undermine our ability to make these decisions correctly.

As these examples point out the United States needs good statistics in order to have good economic policy. To quote the OTA report, "It is clear, however, that the price paid for public policy mistakes that stem from defects in national statistics can be many times higher than the entire national statistical budget." The Com-

mission on Federal Information created in this legislation will move us one step closer to resolving these problems and strengthening our statistical system.

MANAGEMENT OF PUBLIC RECORDS

Title III of S. 1742, as amended, gives the National Archives and Records Administration the authority to provide improved guidance and oversight on the issue of determining what is an agency record. Specifically the bill, as amended, would authorize the Archivist to issue binding regulations regarding record status, require agencies to comply with the binding standards and guidance, and restore the Archivist's authority to inspect records.

The issue of what is considered a federal record and who had the authority to decide it is one which the Committee has much concern over. The Committee is concerned that a number of federal agency records are not being preserved because the agencies have been left to decide the basic question of what is a record.

REAUTHORIZATION

S. 1742, the "Federal Information Resources Management Act" was introduced on October 6, 1989 to reauthorize the appropriations for OIRA to implement the law governing Federal information policy coordination (Title 44, Chapter 35), including the reauthorization of the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget (OMB). Authorization for the law expired on September 30, 1989.

The development of the "Federal Information Resources Management Act" (S. 1742) reflects a detailed examination of the ten-year history of the Paperwork Reduction Act and its implementation by the OIRA. Despite the broad popular appeal of the Act and the importance of its goals and principles, the 1981 enactment marked the only formal authorization of OIRA by the Committee. In the years 1983-1984, 1984-1985, and 1986-1989, authorization of appropriations was provided for in the Continuing Resolution. From 1985-1986 no authorization occurred, leading to a House vote in 1986 to defund OIRA on the grounds that it was using unauthorized OMB general operating funds, and because of OIRA's growing record of substantive interference in agency rulemaking. As a result, the three-year 1986 reauthorization specifically prohibited OIRA from using unauthorized funds to implement the Act.

S. 1742, as amended, extends the authorization of appropriations for OIRA for an additional four years, starting with \$5.5 million in the first year, \$6.5 million in the second year, \$7 million in the third year and \$7 million in the fourth year.

VI. COMMITTEE ACTION

S. 1742 was introduced by Senators Bingaman and Lieberman on October 6, 1989, and referred to the Committee on Governmental Affairs.

HEARINGS

Three days of hearings were held by the Subcommittee on Government Information and Regulation on subjects related to the re-

authorization of the Paperwork Reduction Act. Subsequently, two additional days of full Committee hearings were held on S. 1742.

On May 15, 1980 the Subcommittee on Government Information and Regulation held a hearing on The Quality and Uses of Federal Information (S. Hrg. 101-84). Testimony was received from Michael Boskin, Chairman of the Council of Economic Advisors; Vincent P. Barabba, Executive Director of Market Research and Planning, General Motors Corporation; Robert L. Park, Executive Director, American Physical Society; Courtenay Slater, Chairman, Slater Hall Information Products, and Chairman of Professional Associations on Federal Statistics; and Christopher T. Cross, Chairman, Macro System, Inc.

In June 1989, the Subcommittee on Government Information and Regulation held two days of hearings on Reauthorization of the Paperwork Reduction Act (S. Hrg. 101-166). On June 12 1989, testimony was received from John Diebold, Chairman, the Diebold Group; Ralph V. Carlone, Assistant Comptroller General for Information Management and Technology, General Accounting Office; Kenneth B. Allen, Senior Vice President, Government Relations, Information Industry Association; Jerry J. Berman, Director, Information Technology Project and Chief Legislative Counsel, American Civil Liberties Union; D. Kaye Gapen, Dean of Libraries, University of Wisconsin, representing the Association of Research Libraries; Janet L. Norwood, Commissioner, Bureau of Labor Statistics; Cynthia Kendall, Deputy Comptroller for Information Resources Management, Department of Defense; and Richard H. Hopf III, Acting Commissioner, Information Resources Management Service, General Services Administration.

On June 16, 1989, testimony was received from S. Jay Plager, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget; Gary Bass, OMB Watch; David Doniger, Senior Attorney, Natural Resources Defense Council; James L. Martin, Legislative Counsel and Director of State-Federal Relations, National Governors Association; Mark Richardson, Executive Director, Business Council on the Reduction of Paperwork; Gerald Graff, Graff Flooring, representing the American Subcontractors Association, National Small Business United, and Small Business Legislative Council; Carol Miller, Vice President and Director Human Resources, Lancaster Laboratories, representing the U.S. Chamber of Commerce; and Richard M. Patterson, Government Relations Manager, Dow Chemical, representing the National Association of Manufacturers.

In February 1990, the Committee held two days of hearings, on S. 1742, and the Reauthorization of OMB's Office of Information and Regulatory Affairs (S. Hrg. 101-588). On February 21, 1990, testimony was heard from the Honorable Paul S. Sarbanes, U.S. Senator (D-MD); the Honorable Ted Weiss, U.S. Representative (D-NY); James B. MacRae, Jr., Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget; Milton J. Socolar, Special Assistant to the Comptroller General, U.S. General Accounting Office; Gary Bass, OMB Watch; Sherry Ettleson, Staff Attorney, Public Citizen's Congress Watch; and Cass R. Sunstein, Professor, University of Chicago Law School.

On February 22, 1990, testimony was heard from Stuart Eizenstat, Attorney, Powell, Goldstein, Frazer & Murphy, on behalf of the Coalition for Reauthorization of the Paperwork Reduction Act; Sally L. Douglass, Assistant Director for Federal Government Relations, Research and Policy, National Federation of Independent Businesses; J. William Hirzy, President, National Federation of Federal Employees, Local 2050 at the Environmental Protection Agency; Gerald E. Yung, Vice President, Government Relations, Mead Data Central, representing the Information Industry Association; Jerry Berman, American Civil Liberties Union; and Patricia Wilson Berger, President, American Library Association.

COMMITTEE VOTES

On June 7, 1990, the Committee agreed to an unprinted amendment offered by Senator Carl Levin to extend the authorization period from three to four years, by a voice vote.

Also on June 7, 1990, the Committee rejected an amendment by Senator Roth to strike section 112 of the bill, public disclosure and reporting by the Office of Information and Regulatory Review, by a vote of 7 to 7.

YEAS—7

Roth
Stevens
Cohen
Rudman
Heinz
Wilson
Nunn

NAYS—7

Glenn
Levin
Sasser
Pryor
Kohl
Lieberman
Akaka

Also on June 7, 1990, the Committee agreed to report S. 1742, with an amendment in the nature of a substitute, to the Senate favorably, by unanimous vote of 14 to 0.

YEAS—14

Glenn
Nunn
Levin
Sasser
Pryor
Kohl
Lieberman
Akaka
Roth
Stevens
Cohen
Rudman
Heinz
Wilson

NAYS—0

VII. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The name of the law is changed from the Paperwork Reduction Act to the Federal Information Resources Management Act to reflect its expanded scope and added priorities.

Section 2. Findings

Section 2 details the congressional findings that guide the expanded focus of the law. It is found that the unnecessary paperwork burden on the public has increased and that additional efforts need to be exerted on behalf of individuals, businesses, educational institutions, and State and local governments to reduce that unnecessary burden, particularly with respect to the burden associated with the Federal procurement, grant programs, federal taxation, and international competitiveness. The Office of Management and Budget needs to do more to accomplish the information management functions assigned to it in light of the changing information needs of the Government and society. The Office of Management and Budget needs to promote the concept of information resources management as a means of strengthening agency information management capabilities. Coordination of information policy depends on stronger leadership from the Congress and the executive branch. The Office of Information and Regulatory Affairs (OIRA) review agency submissions requires less delay and more public accountability.

Section 3. Table of contents

The Act is amended into three separate titles: Title I—Information Resources Management of Federal Departments and Agencies. Title II—Commission on Federal Information. Title III—Management of Public Records.

TITLE I—INFORMATION RESOURCES MANAGEMENT OF FEDERAL DEPARTMENTS AND AGENCIES

Section 101. Purposes

Section 101 reiterates and expands upon the Act's original orientation on reduction of unnecessary government paperwork by emphasizing the need for a coordinated and comprehensive Federal information management process that will ensure that the public will secure the greatest possible benefit at the least possible cost from information collected, maintained, used, disseminated, and retained by the government; that government information is used to strengthen decision-making, accountability, and efficiency in Government and society; that automatic data processing, communication, and other information technologies are acquired and used to achieve the purposes this chapter; that to the extent practicable Federal information policies and practices be made uniform; that the accountability of the Office of Management and Budget and all Federal agencies to Congress for the implementation of this chapter be improved; and that the collection, maintenance, dissemination and retention of information by the Federal government is consistent with applicable laws, including the Privacy Act, the

Computer Security Act of 1987, the Freedom of Information Act, and title 44 of the United States Code.

Section 102. Definitions

1. A definition of "Administrator", to mean the Administrator of the Office of Information and Regulatory Affairs, is added.

2. The term "burden" is clarified by detailing examples of resources that may be expended that are to be included in the calculation of burden.

3. A definition of "information resources" is added which includes data and information in any format; information resource management professionals; and related resources such as information technology.

4. The term "information resources management" is redefined to encompass the entire process of creating, developing and implementing information policy established by the Act.

5. The term "information systems" is redefined to mean information developed or acquired through either manual or automated means to fulfill an agency's mission, goals or objectives; the processes, procedures, and personnel to obtain, maintain, use and disseminate information; and the related information technology resources.

6. A definition of "information technology" is added which encompasses the hardware and software used in connection with Government information, regardless of the technology involved, including automatic data processing equipment.

Section 103. Office of Information and Regulatory Affairs

Section 3503 of title 44 is amended to place ultimate responsibility for implementation of Chapter 35, and the coordination of its provisions with the other functions of the Office of Management and Budget, in the Director of the Office of Management. An Administrator is designated the head of the Office of Information and Regulatory Affairs who is to be appointed by the President with the advice and consent of the Senate.

The President is directed to pay special attention to the qualifications and credentials of the appointee which may relate to the statutory functions of the Office. The Committee does not require a specific educational degree, level of education, or type of previous employment. However, the appointee must be qualified to fulfill the primary purpose of the law: information policy co-ordination and information resources management. The profile of a suitable appointee includes education, work experience, or related professional activities in information resources management, information technology, statistics, libraries, records management, and more. Work experience encompasses local, state, or federal government; colleges, universities, foundations, specialized policy, research, or education institutes, professional associations or organizations, and the private sector.

The Office of Information and Regulatory Affairs is to be included as a separate line item in the Office of Management and Budget's annual budget submission.

Section 104. Authority and functions of the Administrator.

Section 104(a) amends section 3504(a) of title 44 to reflect the more comprehensive view of government information resources management now embodied in the Act. The Administrator is directed to give balanced emphasis to all functions committed to his charge and to coordinate the development and implementation of information policy with other concerned agencies. The term "balanced emphasis" means that each of the OIRA statutory functions must be given proportionately equal resources, staff, and priority by the Administrator.

Section 104(b) amends section 3504(c) (5) and (6) to emphasize the need to seek reductions in any unnecessary information collection burden in the areas of Federal procurement and grant programs.

Section 104(c) amends Section 3504(d) respecting the Administrator's statistical policy and coordination functions to emphasize the need for planning, coordination and leadership in the development of the Federal statistical capability including the training of federal employees in statistical policy. These functions are to be directly carried out by a chief statistician to be appointed by the Administrator.

Section 104(d) amends section 3504(f) respecting the Administrator's privacy functions by adding provisions requiring him to oversee the development of new information systems by agencies containing personal information to ensure that they comply with the policies, principles, standards and guidelines of existing laws, and to report the results of periodic compliance reviews to the Congress.

Section 104(e) adds a new section 3504(h) which details the information dissemination functions of the Administrator. These functions are not intended to provide OIRA with an item-by-item review of agency activities such as undertaken with regard to information collection requests. Instead, the law separates OIRA's policy guidance role from the decision-making responsibility of the agencies. Lastly, the Committee envisions greater public participation in the debate and development of information policies at OIRA and the agencies.

Specifically, OIRA's responsibilities include the development and issuance of guidelines, after notice and receipt of public comment, with respect to agency fulfillment of information and dissemination functions, the promotion of policy research and development in the area of information dissemination to serve as a basis for the development of effective guidance for program and policy development in Federal agencies, the establishment of procedures for systematic oversight to ensure that the guidelines are carried out, and coordination of the identification of priorities for the development of uniform technical standards. With regard to such technical standards, the Department of Commerce is directed to issue uniform technical standards, after consultation with the public and appropriate agencies, and the Office of Management and Budget is to encourage their usage and monitor their effectiveness.

The guidelines to be issued by the Administrator must be developed in consultation with central information management agencies possessing governmental dissemination authority under law

and be designed to strengthen public access to Government information, regardless of format, consistent with existing law. Strengthening public access means making publications, products, and services available on a timely, equitable, and equal basis. Timely means without undue delay following publication or request; equitable means at a fair cost; and equal means on a nonexclusive and nondiscriminatory basis.

The term "regardless of format" is intended to include publications beyond those printed on paper, and includes, but is not limited to such other formats as electronic, compact disc, and more.

Examples of federal information management agencies which must be consulted by OIRA include, but are not limited to: The National Archives and Records Administration; The National Institute of Standards and Technology; the General Services Administration; other Information Resources Management officers and professionals in government; and where appropriate, public affairs or public information officers in the agencies.

The guidelines must maintain an affirmative role for Federal agencies and reflect that agency heads have the primary responsibility for management of Federal information resources and that a public and private sector sharing of responsibility for information dissemination is sound policy.

In addition, the guidelines should reflect that a diversity of sources of government information is sound public policy. This means having governmental, nongovernmental public entities, and private sector sources—in whole or in part—of government information to the public. In determining whether and how to disseminate information, agencies should take advantage of initiatives existing outside government (in the private sector and public sector) but be mindful not to sacrifice the public purposes of the agency's statutory mission.

The guidelines will require that agencies, in determining how to fulfill their information dissemination functions, consider: (1) whether dissemination is required by law; (2) whether dissemination is necessary for the proper performance of agency functions; (3) whether disseminating public information would assist in public oversight of agency operations or would promote the general social or economic welfare of the United States; (4) whether an information product or service available from public or private sources is equivalent to an agency product or service and reasonably achieves the dissemination objectives of the agency product or service; (5) whether dissemination methods will maximize the utility of the information to the public; and (6) whether it serves to promote the economy and efficiency of Government operations.

Importantly, the Committee does not intend these factors to be part of an equation or a strict balancing test, and no single factor is to be viewed as determinative. However, the Committee does expect agencies to consider and be prepared to justify these factors.

Coordination of federal information dissemination activities requires improved guidance from OIRA and improved management by each agency. Agency consideration of the above factors should result in a written record within each agency and serve, with other studies or analyses as the basis for information decision-making by agency heads, and for the benefit of congressional oversight as

well. The Committee believes that agencies should stay abreast of the development of information products, services, and activities—whether offered by the government, by commercial sources, or through nongovernmental public sources. Agencies should factor these alternatives into agency planning. Lastly, the Committee intends by its dissemination provisions to reject the simplistic test of OMB Circular A-130 which demanded that agencies refrain from dissemination if anyone, particularly commercial sources, provided similar products or services. This policy served only to eliminate the discretion and the authority of agencies to determine the necessity of performing their own governmental functions.

Section 105. Paperwork reduction goals and deadlines

Section 105 revises section 3505 by directing the Administrator to identify initiatives associated with the collection burden, especially with respect to any unnecessary burden associated with Federal procurement, grant programs, Federal taxation, and American international competitiveness, and to identify areas of duplication in information requests and develop a schedule and methods for eliminating them.

Section 106. Federal agency responsibilities

Section 3506 is amended to place primary responsibility for information management in the agencies. Agency heads must appoint a Chief Information Resources Management Official, who is to be a career official and shall have a degree of independence from program responsibilities, to assist in agency management needs assessments and in the deployment of appropriate technological tools to gather, process, use, and disseminate information that is crafted to achieve successful accomplishment of program goals and the agency mission. The Chief Information Resources Management Official reports to the senior official designated by the agency head to carry out the responsibilities of the agency under this chapter, who in turn reports directly to the agency head. Each agency is to establish an agency-wide program of information resources management which embodies a life-cycle approach to the management of information resources, and take into account the accessibility, usefulness, and timely and equitable public release of Government information. This is to include the development of information systems, processes and procedures to enhance the sharing of common data within and between programs and agencies, and maximizes the usefulness and timely release of government information within and between agencies and the public; and the establishment and maintenance of agency systems for dissemination of all public information products and services, including those in electronic formats, which will ensure that the public has timely, equitable, and equal access to government information.

Section 3506(c) strengthens the affirmative responsibilities of agencies to disseminate government information. The term "regardless of format" applies to all government information and includes, but is not limited to, government information available in printed publications, on-line data, compact disc, and more.

Agencies are required to provide the public with advance notice when the agency initiates, terminates, or significantly modified

public information products or services. Such notice is intended to provide user populations of government information with meaningful notice of changes in products or services. Such notice should include the Federal Register, but should also extend to the public and trade press, and to professional organizations.

Agencies are also required to provide the Superintendent of Documents for distribution to the Federal Depository Library Program (the Program) all publications required by Chapter 19 of Title 44. This change reflects the Committee's belief in the longstanding and important role played by the Program in ensuring public access to government information. While deferring to Chapter 19 of Title 44 for a definition of which publications are distributed by the Program, S. 1742 includes all formats within the scope of such publications.

New section 3506(d) provides for the establishment by each agency of a public file for each function required by this chapter which involves review of an agency activity, or any other function involving review (not specifically authorized by this chapter), by the Office of Information and Regulatory Affairs. The file must include with respect to each activity under review (1) copies of all written materials regardless of format which the agencies provide to or receives from the Office of Information and Regulatory Affairs; (2) information about such agency submissions including the date of the submission, the nature of the activity with respect to which the submission is made, and the name of OIRA official to whom it is submitted; and (3) copies of all changes in the agency activity made as a result of OIRA recommendations.

Sections 3506(e) and (f) require that the agency head or the senior official designated by him establish a review procedure for information collection requests prior to submission to the Administrator. The agency reviewer must be sufficiently independent of program responsibilities to be able to approve, disapprove or make improvements in any agency collection of information. The senior official must certify to the Administrator that (1) the collection of information is necessary to the proper performance of the agency's function and are not unnecessarily burdensome; are not unnecessarily duplicative of information readily available to the agency; have practical utility; are plainly written and understandable to potential respondents; and explain the need and ultimate use of the information to be collected and the need for accurate and timely responses; and (2) the agency has taken steps to notify and consult with other agencies and the public with respect to the clarity and possible burden of the information collection and will use the information collected effectively and efficiently.

Section 107. Approval and delegation of information collection; self-certification process

Sections 3507(a) and (b) are amended to provide that after submission of a proposed information collection request to OIRA the agency must provide notice in the Federal Register of at least a 30 day period in which the public may comment to the agency and to OIRA on the submission. The Administrator may not act on the proposal before the expiration of the 30 day comment period and must provide a written explanation of the reasons for any substan-

tive or material disapproval or modification of a proposal, which is to be placed in the public file and made available upon request.

Section 3507(d) is amended to provide a procedure for agency self-certification for currently approved information collection requests. If an agency wishes to extend the authorization period for an information collection request it must publish a notice to that effect and an invitation for public comment in the Federal Register prior to the date of expiration of the control number in conformity with the notice requirements of section 3507(a)(2)(B). Thereafter, but no later than 60 days prior to the expiration of the control number, the agency must evaluate the public comments, conduct the review required by section 3506(f)(2), and provide the Administrator with the certification required by section 3506(f). The Administrator, prior to the expiration of the control number, must then assure himself that the agency certification is proper, evaluate the public comments, and either approve or disapprove the information collection request. If certification is not provided to the Administrator at least 60 days before the expiration of the control number, the agency must submit the proposal for review in accordance the requirements of section 3507(a) and (b). An agency may not make a substantive or material modification to an information collection request approved by the Administrator unless it has been submitted for review and approval or disapproval by the Administrator.

Section 107(5) adds new sections 3507(i) and (j) which deal with review procedures for proposed rules which contain information collection requirements.

Section 3507(i) provides that a proposed rule which contains an information collection requirement must be forwarded to the Administrator no later than the date of publication of a notice of proposed rulemaking in the Federal Register. The Administrator may file public comments within 60-days after the Federal Register notice. The agency must explain how any collection of information requirement contained in a final rule responds to the Administrator's or public's comments, if any, or explain why it rejected those comments, at the time of publication of the final rule in the Federal Register. The Administrator may not disapprove any collection of information specifically contained in a rule if he had notice and failed to comment on the rule within 60 days of the notice of proposed rulemaking. But the Administrator may disapprove any information collection request (1) which was not specifically contained in the the proposal rule; (2) if the agency did comply with the notification requirements of subsection (1); (3) if the Administrator finds within 60-days of the publication of the final rule that the agency's response to the comments of the Administrator is unreasonable; or (4) if the Administrator finds that the agency has substantially modified in the final rule the collection of information requirement originally contained in the proposed rule and has not given the Administrator the information required by subsection (1) with respect to the modified information collection requirement at least 60-days before issuance of the final rule. Any disapproval by the Administrator shall be made publicly available, together with the reasons for the decision. The decision of the Administrator to approve or not act upon a collection of information

requirement contained in an agency rule is not subject to judicial review.

Section 3507(j) establishes procedures for review of information collection requirements that have currently valid control numbers assigned by the Administrator. If an agency wishes to extend the authorization period for an information collection requirement it must publish a notice to that effect and an invitation for public comment in the Federal Register prior to the date of expiration of the control number in conformity with the notice requirements of section 3507(a)(2)(B). Thereafter, but no later than 60 days prior to the expiration of the control number, the agency must evaluate the public comments, conduct the review required by section 3506(f)(2), and provide the Administrator with the certification required by section 3506(f). The administrator, prior to the expiration of the control number, must then assure himself that the agency certification is proper, evaluate the public comments, and approve the information collection requirement unless (1) the agency has failed to comply with the requirements of paragraphs (1), (2) and (3) of this subsection; (2) the agency proposes to make a substantive or material modification to the information collection requirement; (3) the administrator finds the agency certification to be unreasonable or not adequately supported by the record compiled by agency; or, (4) the Administrator determines that the record upon which the agency made the certification is not complete.

If the Administrator disapproves or instructs the agency to make a substantive or material change to an information collection requirement, he must publish an explanation of his action in the Federal Register and instruct the agency to commence a rulemaking proceeding which is to be limited to consideration of the changes suggested by the Administrator. The information collection requirement is then to be submitted for approval or disapproval pursuant to section 3507(i). No information collection requirement may be approved for a period longer than 3 years.

Section 108. Federal locator system

Section 3511 is amended to direct the administrator to establish a Federal Information Locator System which is to serve as a comprehensive inventory and authoritative register of all information requests by the Federal government to the public and to assist agencies and the public in locating Government information. Each agency will provide a data profile of all systems of records required to be identified under the Privacy Act and each information request and requirement approved by the Administrator. Within one year of the date of enactment the Administrator, in consultation with other agencies and the Advisory Committee on Information Policy, shall determine the optimal composition of the system and report to the Senate Committee on Governmental Affairs and the House Committee on Government Operations on the status of the development and implementation of the system. The Administrator is charged with reviewing the effectiveness of the system on an ongoing basis.

Section 109. Review of agency activities; reporting; agency response

Section 3513 is amended by adding provisions requiring the Administrator to engage in more intense review, audit, and oversight of information management programs and practices to ensure that the policies and principles of the Act are being effectuated, including the development of a five-year plan for information resources management in consultation with the Administrator of General Services, the Secretary of Commerce, and the archivist of the United States.

Section 110. Responsiveness to Congress

Section 3514 is amended to require that the Administrator's annual and other periodic reports to Congress include a summary of the results of reviews performed in accordance with amended section 3513; the report required by the Privacy Act of 1974; and the report on matching programs when required by subsection (u)(6) of the Privacy Act. Also, within one year of the enactment the Administrator is to submit (1) to the Senate Committee on Governmental Affairs and the House Committee on Government Operations a report on the Federal demonstration project in federally sponsored research that comprehensively lists all information collection requests subject to the requirements of the Act together with estimates of associated burdens; specifically identifies information requests that have been rejected by the Administrator; and provides recommendations to reduce the burdens of such requests by 5 percent; (2) a report on the progress of the initiatives identified under section 3505(1), and (3) a report on the results of the elimination of any unnecessary duplication associated with the review required by section 3505(2). Within one year the Administrator must report to Congress, after consultation with other agencies and the Advisory Committee on Information Policy, on the feasibility and means of establishing a comprehensive inventory and authoritative register of all information dissemination products and services disseminated by the Federal Government, including whether an on-line service can best accomplish access to Government information.

Section 111. Consultation and advisory committees

Section 3517 is amended to require the Administrator to provide timely opportunity for agencies and the public to comment on information collection requests and to consult with all interested parties, including advisory committees, on the development of information and statistical policies, plans, rules, regulations, procedures, and guidelines. The Administrator is directed to establish an Advisory Committee on Information Policy to advise in carrying out the functions assigned under section 3504(b), and an Advisory Committee on Statistical Policy to advise in carrying out the functions assigned under section 3504(d)(1).

Section 112. Public disclosure and reporting by the Office of Information and Regulatory Affairs

Section 3518 establishes new public disclosure and reporting requirements on OIRA with respect to its reviews of the regulatory

and nonregulatory activities of agencies, and sets definitive deadlines for the completion of its review activities. The Administrator is required to establish a public file for each agency activity that comes before it for review, whether or not it is specifically authorized by this chapter. Such files must be created immediately upon receipt of written material, regardless of format, which initiates review of an agency activity. Written materials subsequently received relating to review of the agency activity must be made available in each public file within no later than five calendar days after OIRA receives or provides such materials. The file must include (a) copies of all written material, regardless of format which are received or provided by OIRA from or to an officer or employee of the agency conducting the activity, and officers or employees of other agencies; an officer or employee of OIRA; or any person outside the Federal government; (b) copies of any drafts of pre-rulemaking, advanced notice, or notice of rulemaking; and (c) copies of any proposed or final rulemaking. These provisions are not intended to require public disclosure of communications between OMB and any other office within the Executive Office of the President. The public file is to include a notice of each meeting attended by OIRA with persons outside the Federal government relating to any review activity.

Within five days after OIRA concludes a review activity it must place in the public file a summary of any significant changes made as a result of OIRA recommendations or actions, as well as the reasons and authority for such action, and an explanation of any action taken as a result of a review of any submission.

Each month OIRA must make public in its reading room a list of all proposed or final rules which have been submitted for review and the estimated length for each such review. The Administrator must also place in the reading room all written materials received from persons outside the Federal government concerning any agency rulemaking not under review.

Section 3518 establishes disclosure requirements with respect to written and oral communications between OIRA and persons who are not employees of the Federal government regarding an agency rulemaking activity under review. Written materials, regardless of format, will be sent to the appropriate agencies; agencies will be advised of the substance of oral communications OIRA receives regarding such rulemaking; and agency heads will be invited to meetings which OIRA has scheduled with such persons. Only the Administrator and Deputy Administrator may communicate with a nongovernmental person with respect to regulations under review.

Communications between OIRA officials and OIRA staff must be disclosed, with the limitations set out below, but the communications between OIRA and the Executive Office of the President are specifically exempted from disclosure. These provisions reflect the Committee's distinction between privileged communications within the Executive Office of the President and written materials which serve as the basis for OIRA action or recommendations with regard to rulemaking submissions or reviews. The provision requiring disclosure of intra-OIRA staff communications is specifically intended to create a record of the public and the Congress of memoranda, studies, surveys, policy analyses, research findings, or their sub-

stantive materials which OIRA relies upon when expressing its views, recommendations, or actions involving agency rulemaking. The Committee intends by these provisions to require disclosure of materials which serve as the factual and analytical basis for the outcome of OIRA regulatory review activities. Internal OIRA staff notes, memoranda, and communications which fall outside this criteria are not intended to be subject of disclosure.

Finally, section 3518 establishes deadlines for completion of OIRA reviews. Review must be completed no later than the earlier of 60 days after the submission of the regulatory activity to OIRA for review or by the date established by statute or court order. The date of completion for reviews not subject to statutory or court deadline may be extended by 30 days by the Administrator upon written notice to the head of the agency involved. Review will be deemed completed if no written notice of extension is provided or at the end of the 90 days review period.

Section 113. Authorization of appropriations

Appropriations for the Office of Information and Regulatory Affairs are reauthorized for four years. An appropriation of \$5,500,000 is authorized for fiscal year 1990, \$6,500,000 for fiscal year 1991, \$7,000,000 for fiscal year 1992, and \$7,000,000 for fiscal year 1993.

Section 114. Technical and conforming amendments

The table of sections for chapter 35 of the title 44 is amended to reflect the addition of new section 3518 and the renumbering of existing subsequent sections. The term "Administrator" is substituted for the term "Director" where appropriate throughout chapter 35.

TITLE II—COMMISSION ON FEDERAL INFORMATION

Section 201. Findings

Congress finds that information is the infrastructure for decision-making and is vital to insure the efficient and effective operation of the Federal Government and an informed citizenry; that the Federal Government is an important provider of information both for its own use and for State and local governments, business and the public; that Federal information and statistical data has not kept pace with changes in the United States economy and society and may lack the ability to provide relevant information for future decisions; and that there are problems of quality and timeliness with Federal information and statistical data.

Section 202. Establishment of the Commission

There is established a Commission on Federal Information.

Section 203. Functions of the Commission

The Commission is directed to study and investigate the long-term needs of the Federal Government relating to information gathering, processing, analysis and dissemination and to report to Congress and the President no later than the date of enactment of this Act, its findings and recommendations for changes in current statutes, policies, rules, regulations, procedures, and practices. It

may make such interim reports and recommendations as its determines desirable.

Upon submission of the Commission's final report OMB, in coordination with executive agencies, must take action to formulate the views of the executive branch agencies on the Commission's recommendation, implement those recommendations where practicable within the limits of authority and resources, and propose legislation to carry out those other recommendations in which such agencies concur. At least once every six months after the submission of the Commission's report OMB must report to Congress and the President the status of actions taken or to be taken, and within two years it must submit a final report of such actions to Congress and the President.

Section 204. Membership of the Commission

The Commission is to be composed of sixteen members, including two Members of the Senate appointed by the President of the Senate; two Members of the House of Representatives appointed by the Speaker of the House of Representatives; the Director of OMB and two other officials or employees of the executive branch appointed by the President; two members from among officials of State and local governments appointed by the President; and seven members of the public, including information users and providers and other interested groups, to be appointed by the President. The Chairman and Vice Chairman are to be selected by Commission from among its members. The initial appointments are to be made within 120 days of enactment.

Section 205. Travel expenses

Members of the Commission will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

Section 206. Powers of the Commission

The Commission or any subcommittee or member so authorized, may hold hearings, take testimony, and receive evidence as may be deemed advisable. The Commission may appoint necessary personnel without regard to the requirements of title 5, United States Code, and such personnel may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, but at a rate not to exceed the maximum rate authorized by the General Schedule. The Commission may also procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily equivalent of the annual basis pay in effect for the maximum rate authorized by the General Schedule. The Commission is authorized to hire private organizations and educational institutions to carry out such studies and prepare such reports as the Commission determines are necessary to carry out its duties.

Section 207. Cooperation with Federal agencies

Federal Agencies are authorized and directed to furnish the Commission with such data, reports, and other information not otherwise prohibited by law as requested by the Chairman. Agencies are authorized to provide such services as the Commission may request on such basis, reimbursable or otherwise, as may be agreed upon.

Section 208. Termination of the Commission

The Commission terminates 120 days after it submits its final report.

Section 209. Authorization of appropriations

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out its functions.

TITLE III—MANAGEMENT OF PUBLIC RECORDS

Section 301. Binding regulations concerning public records

Section 3302 of title 44, dealing with the promulgation of regulations for the disposal of Federal records by the Archivist of the United States, is amended to reflect that such regulations are binding on all Federal agencies and to add provisions that direct the Archivist to promulgate standards for interpreting the definition of records under section 3301 and standards for establishment and maintenance of adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency for incorporating recordkeeping requirements to be issued by heads of agencies. Section 3102(3) of title 44, directing the heads of agencies to establish programs for the efficient and economical management of agency records, is amended to incorporate the requirement of compliance with the regulations promulgated pursuant to section 3302.

Section 2107, respecting the acceptance of records for historical preservation by the Archivist, is amended to authorize the Archivist or his designee, subject to the provisions of section 2906 and notwithstanding any other provision of law, to inspect or examine any agency record to determine if an agency is in compliance with the binding guidelines issued by the Archivist and whether such record has sufficient value to warrant its preservation.

Section 2906(a)(1), respecting the inspection by the Archivist and the Administrator of General Services of agency records and records management practices and programs, is amended to reflect that such inspections encompass their responsibilities under chapters 21, 31, 33, and 35, as well as chapter 29, and to authorize inspections to determine whether records in the custody of the agency have sufficient historical, administrative, legal, research or other value to warrant their further preservation.

Section 2906(a)(2) is amended to direct the Archivist and Administrator to promulgate regulations, subject to the approval of the President, to provide for the inspection of records, the use of which is restricted by law; and to provide that regulations authorizing and restricting the use of such records applicable to the head of the custodial agency or to employees of that agency are applied in the same manner to the Archivist and the employees of the National

Archives and Records Administration, and the Administrator and the employees of the General Services Administration.

Section 3303a(a), respecting the examination of lists and schedules by the Archivist to determine whether records therein lack preservation value, is amended to incorporate the limitations of amended section 2906.

Section 302. Reports on routine uses

Section 552a(r) of title 5, United States Code, respecting advance reports to congressional committees and OMB regarding proposed changes in systems of records or matching programs to permit evaluation of the probable or potential effect of the proposal on the privacy or other rights of individuals, is amended to add a proposed change in "routine use" as a matter for advance notification.

VIII. REGULATORY IMPACT

Rule 26.11b of the Standing Rules of the Senate requires the report accompanying each bill or joint resolution of a public character to contain an evaluation of the regulatory impact of the legislation. The evaluation must include the four elements listed below.

1. An estimate of the number of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses. S. 1742, as amended, would not result in any additional regulation to any individuals or businesses.

2. A determination of the economic impact of such regulation on the individuals, consumers, and businesses affected. Not applicable.

3. A determination of the impact on the personal privacy of the individuals affected. Not applicable.

4. A determination of the amount of additional paperwork that will result from the regulations to be promulgated pursuant to the legislation, including estimates of the amount of time and financial cost required of affected parties, as well as reasonable estimates of the recordkeeping requirement that may be associated with the legislation. No additional paperwork is imposed on the public by S. 1742, as amended. S. 1742, as amended, if carried out and properly implemented would result in the additional reduction of paperwork burden.

IX. COST IMPACT

In compliance with paragraph 11(a) or rule XXVI of the Standing Rules of the Senate, the Committee was provided the following cost estimate of the cost of S. 1742, as amended, as prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 1, 1990.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1742, the Federal Information Resources Management Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 1742.
2. Bill title: Federal Information Resources Management Act.
3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs on June 7, 1990.
4. Bill purpose: S. 1742 would authorize the appropriation of \$6.5 million in 1991 and \$7.0 million in each of the fiscal years 1992 and 1993 for the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). The amount allocated to OIRA in OMB's 1990 appropriation is currently \$5.3 million, and the President has requested \$5.9 million for 1991.

S. 1742 also would redefine and clarify many of the responsibilities of OIRA and would expand federal agencies' roles in efforts to improve the management of information.

In addition, the bill would establish a two-year temporary Commission on Federal Information that would recommend to the President and the Congress changes in the government's laws and practices for meeting the long-term needs in information gathering, analysis, and dissemination. The bill would authorize the appropriation of amounts necessary to conduct the operations of the commission, including hiring staff and consultants as required.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
OIRA:					
Authorization level.....	6.5	7.0	7.0		
Estimated outlays.....	6.0	6.9	7.0	0.6	
Commission on Federal Information:					
Estimated authorization level.....	.6	.6			
Estimated outlays.....	.4	.6	.2		
Advisory committees:					
Estimated authorization level.....	.1	.1	.1	.1	.1
Estimated outlays.....	.1	.1	.1	.1	.1
Bill total:					
Estimated authorization level.....	7.2	7.7	7.1	.1	.1
Estimated outlays.....	6.5	7.6	7.3	.7	.1

The costs of this bill fall within budget function 800.

Basis of estimate: This estimate assumes the amounts authorized will be appropriated. The estimate of outlays of OIRA is based on the historical spending patterns of OMB. The estimates of costs for the commission (\$1.2 million over three years) and advisory committees (\$0.1 million a year) are based on the costs of similar study commissions.

Provisions of S. 1742 mandating certain OIRA responsibilities, such as establishing a Federal Information Locator System, a

public information file in a reading room, and an agency review process, would not result in additional costs because OIRA ~~already~~ is performing these tasks under current law. Other provisions of S. 1742 clarifying the role of federal agencies in information management are not expected to result in significant additional costs.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: James Hearn.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

X. ADDITIONAL VIEWS OF MESSRS. ROTH, STEVENS, HEINZ, COHEN, RUDMAN, WILSON, AND NUNN

Serious flaws exist in the report accompanying S. 1742, legislation which amends the Paperwork Reduction Act and renews authorization for appropriations for the Office of Information and Regulatory Affairs (OIRA).

While we enthusiastically agree with central tenet of the reports that the Committee supports continuing and building upon the basic framework of the existing Paperwork Reduction Act, certain assertions and points made by the report in the Committee's name are cause for concern and merit comment and response. During this Congress, we have examined the same record as the authors, but have arrived at different conclusions. These differences portray contrasting versions of the signal Congress should send the Executive branch in order to more effectively attain the Act's important public purposes in the future. Moreover, these differences are likely to be significant matters in the full Senate's deliberations on this bill. Accordingly, the purpose of this statement is to voice our concerns regarding both S. 1742, as reported, and the accompanying report.

REGULATORY REVIEW

S. 1742 as reported contains provisions, sections 112 and 106, concerning presidential review of federal agency regulations. These provisions prescribe reporting and disclosure requirements for communications with and within OIRA. We have found these requirements unjustified in their current form and a powerful hinderance to the practical operation of OIRA. Moreover, we are concerned that their inclusion in the bill, which has engendered a veto recommendation by the President's senior advisors, threatens the reauthorization of appropriations for OIRA to carry out the provisions of the Paperwork Reduction Act.

At the outset, it should be stressed that a majority of the Committee does not support section 112. A motion to strike the disclosure section failed on a tie vote. Given the Committee's role in recommending legislation to the full Senate, the fact that the Committee is evenly divided on this matter merits special notice.

The issue of the source of OIRA's authority with respect to the review of proposed agency regulations is a sensitive one which has been debated for a decade. We support the ability of the President to actively supervise the government's regulatory processes. Senator Levin, in a 1986 statement, commented:

I like the notion of a President who is watching the shop and that as an elected official, he is the person—allegedly acting through OMB—to whom the public can turn both for results and for blame * * * (i)n short, the concept of

Executive oversight of agency rulemaking can make good management sense. (Statement of Senator Carl Levin, Press Conference on OMB Disclosure Policy, June 16, 1986.)

We agree with this notion. We also agree there exists a need for presidential accountability in the exercise of this function, and strongly support responsible efforts to assure such accountability. In 1982, Senators Levin, Rudman, and Durenberger sponsored and the Senate passed legislation establishing standards for public disclosure within the regulatory process. Although the bill did not become law, it resulted in the 1986 agreement setting out procedures, delineated in what has become known as the "Gramm Memo". This memorandum issued by then OIRA administrator Wendy Lee Gramm specifies public disclosure procedures governing activities relating to the review of proposed regulations pursuant to executive order. This agreement was a significant accomplishment which resulted in marked improvements in OIRA's accountability. This non-statutory approach should not be abandoned without good cause.

The Committee report alleges a "substantial record of OIRA's abuse of the regulatory review process" and that "the Committee has found that OIRA has in several key instances breached the terms of its 1986 administrative agreement". However, not one example of such abuse is presented. We find it disturbing that the Committee is prepared to legislate an extremely burdensome remedy in the absence of current and compelling evidence.

There are other, more practical reasons for opposing section 112 and the corresponding agency disclosure requirements in section 106. The disclosure provisions clearly exceed what is necessary to enhance sunshine in the regulatory review process. For instance, section 112 requires the disclosure of all written materials exchanged within OIRA, placing no limit on the subject matter or format of the communication. It is a generally recognized principle of government that employees and their superiors are entitled to privileged communications, and the degradation of this confidentiality has a profound chilling effect on the free exchange of ideas and advice. What Senator would allow the routine public disclosure of memoranda from his own staff? The fact that these disclosure requirements apply to all matters under OIRA's review, not just regulatory review matters, makes these proposals even more unworkable.

The Administration argues that sections 112 and 106 are unconstitutional and will result in a veto of S. 1742. Our purpose here is not to engage in a philosophical debate on constitutional questions; ours are more practical concerns. Whatever the merits of the Administration's argument, there is no doubt that S. 1742 will be vetoed if these sections remain a part of a bill presented to the President. This would truly be regrettable. S. 1742 contains many beneficial provisions and is the product of much hard work. To force a standoff over this issue, in the absence of greater justification or stronger Committee support, would be impractical in attaining the goal reauthorizing appropriations for OIRA, a goal supported by all parties.

The Committee report depicts a consistent history in which OIRA has methodically abused the regulatory review process for political ends, and the Committee, in a unified fashion through this bill, is righting these wrongs. The record does not support this case. The report makes many allegations of abuse, but includes no actual examples. The report also gives the impression of Committee unanimity behind section 112, when actually the Committee is evenly divided on the provision. While the report professes to support the goal of strengthening OIRA's paperwork reduction mission, and indeed, this should be the Committee's priority in the reauthorization process, we urge that sections 112 and 106 with their chilling and cumbersome disclosure requirements will only serve to hinder this fundamental purpose.

The public participation objectives that led to the Gramm Memo now in force were bipartisan. Ironically, the only bipartisan position in the current regulatory review debate in Committee is the opposition to section 112. For these reasons section 112 and the corresponding section 106 should be deleted, and the Committee should focus its efforts on reauthorizing appropriations to the office responsible for carrying out the provisions of an Act that itself affords important protections to the public.

DISCUSSION OF REPORT

The report contains numerous characterizations of Committee deliberations, interpretations, and conclusions with regard to present law and proposed amendments. We believe the Committee's intent has been too liberally asserted. Regretfully, we observe that a significant portion of the report is less a thorough explanation of the bill's provisions and their background and more a philosophical statement ascribed to the full Committee's views. More disturbing to us, however, are the several assertions that appear in the report without adequate support from the record.

This Committee has a long record with respect to the statutory structure and implementation of the Paperwork Reduction Act. Included in this record are Committee reports on the Act's development, (S.Rept. 96-930), and on previous efforts to reauthorize appropriations to OIRA and amend the Act in 1984 (S.Rept. 98-576) and 1986 (S.Rept. 99-347). This record reflects the bipartisan consensus which has existed within this Committee and the Congress in support of strengthening the Act and continuing appropriations to OIRA. Our comments are intended to help constructively and positively build on that record.

What follows are specific comments on points made in the report which we believe need clarification or rebuttal.

1. The report argues the existing paperwork review is not effective.

In the "Background and Need for Legislation" section of the report, the report discusses "Paperwork Reduction Efforts" of the past. A GAO Report, "*Paperwork Reduction: Little Real Burden Change in Recent years*," and the hearing record of this Congress are cited as the basis for concluding:

* * * Furthermore, the Committee believes the existing paperwork review process is not effective.

We have examined the same record and found the conclusion to be incorrect. We believe there is a significant difference between concluding that the paperwork controls contained in the Act need to be improved from the conclusion that the present controls are not working.

The overall burden of information requests of the public by government is increasing. New information needs flowing from new legislation is one reason. But the report's discussion does not contemplate what the burden would be if the management and public accountability controls contained in the Act did not exist. Without the paperwork review process, there is little doubt that paperwork would be more burdensome today. The GAO report notes, for example, actual reductions in unnecessary burden upon the public as a result of the Act.

We believe the burden upon the public would be significantly greater if there was no Paperwork Reduction Act. We also believe the existing controls and many of the improvements proposed to them by S.1742 need to be applied more aggressively by OIRA and the agencies if the American people are to have confidence that government is not asking them to waste their time and effort in providing unnecessary information for regulatory demands. That is an important signal the Congress should send to those in the Executive branch administering the Act.

The public appeal for the Act is based on the premise that government can work better, cheaper, and demand less unnecessary information from them as a result of the law's management and public accountability controls. If the cost and public burden of information requests are not positively impacted by the law, then it does not serve its purpose.

We believe the Paperwork Reduction Act has worked. We view the Committee's record as supporting this conclusion. We also support improving upon past accomplishments. More needs to be done.

2. The report confuses the term "burden" with "unnecessary burden"

The Paperwork Reduction Act is the only statute we know of which mandates the Executive branch to assess and address the cumulative impact upon the public of *all* government sponsored information requests. Information is clearly vital to government programs. However, the concept of "burden" relates to the public's efforts, money, time and other resources expended to provide needed as well as unnecessary information. The anticipation of the Act's mandate coupled with the recognition that public effort requires economic resources which are not disciplined in the federal budget process is what led President Carter to initiate the "information collection budget". While limited, the information collection budget process continues to be the only comprehensive tool we know of which addresses the "hidden taxes"—the "off budget" expenses of the government's paperwork requirements.

We believe the report confuses the term "burden" with that part of the overall burden which is unnecessary. The result is a pejorative use of the concept which leads to some conclusions unsupported by the record to an incorrect interpretation of existing law. For example:

It is important to keep in mind that all information collection in government is not bad, and in fact, much of it is absolutely vital to a well-run government. OIRA's review process has emphasized almost exclusively the burden of information collections. Little attention has been given to the value of Federal information or to efforts to improve the quality and availability of information.

The Committee also feels that we must reverse the negative identify of government information that has been created by the use of a paperwork reduction law to manage valuable information resources. * * * The ten-year history of the Paperwork Reduction Act has unfortunately reflected a pattern of "information reduction" in the name of efficiency, with insufficient regard for providing information necessary to ensure statutory compliance and law enforcement; information necessary for effective planning by agencies; and, the quality of federal data bases or federal statistics.

We do not agree that the Act has contributed to any negative identify of needed government information. We believe it is the failure of the government to manage information needs properly that lead many in the American public to be frustrated with federal regulations and other paperwork demands to which they are asked to respond. The way to reverse the "negative identify" that does exist is for government to do a better job of ensuring there is less waste in meeting its information needs. The Paperwork Reduction Act presents a management and accountability structure designed to accomplish that purpose, not work against it.

As to interpretation of law, the report asserts that William Funk is correct when he is quoted as saying:

* * * There is not provision or authority for OMB to determine that additional information is necessary for the proper performance of an agency's functions.* * *

We view the Act's requirements that agencies justify the "need" for information, including its practical utility, and that the Director of OMB review that justification, as encompassing whether more information meets the "need" more efficiently. Additionally, the Act requires public comments and encourages the use of new information technology and the periodic consideration of alternatives to minimize the overall burden of information requests. Mr. Funk's interpretation, and the report's endorsement of it, are wrong. The consideration of burden includes the benefit of needed information as well as costs. We believe the record demonstrates OIRA and the agencies have interpreted the statute consistently with this principle.

3. The report falsely asserts that OIRA is not authorized by statute to review regulations

In its discussion of "Major provisions of the legislation" the report states:

OIRA is not authorized by statute to engage in the review of regulations proposed by federal agencies.

This interpretation of law is inaccurate. The Paperwork Reduction Act requires agencies to submit all proposals for information collection requests contained in rules to the Director of OMB for review of its need, including practical utility. The Paperwork Reduction Act is a successor to the Federal Reports Act of 1942. It builds upon the authorities and responsibilities given to the Director in that law as a means to focus accountability for minimizing the burden of paperwork requirements upon the public. Since 1942, regulations have been subject to the Director's review consistent with the criterion of the Reports Act, and now the Paperwork Reduction Act.

We observe that all the substantive language granting responsibilities to the Director in the 1942 Act have been retained in the 1980 Act, its amendments, and those proposed in S. 1742. We also observe that the law has granted the Director authority to review regulations which do not specifically contain information collection requests but are the basis for reporting, recordkeeping, or other information requests of the public. The law also allows the Director to review regulations to determine whether or not they are related to information needs.

In 1942, the Congress established the substance of the following language, now found in Section 3507 of the Act:

* * * An agency shall not conduct or sponsor the collection of information unless, in advance of adoption or revision of the request for collection of such information * * * the agency has submitted to the Director the proposed information collection request, copies of pertinent regulations and other related materials as the Director may specify, * * *

The review of regulations has always been central to the purpose of minimizing the burden of information requests upon the public. Given the growing role new laws and new regulations play in creating the need for the public to be involved in providing information, the relationship between the review of regulations and the management of the government's information resources is even more important than before. We do not find in present law, S. 1742, or the record, support for the assertion that the law does not authorize the substantive review of regulations by the Director. To the contrary, the law requires the Director to review regulations in order to meet his or her responsibilities assigned by the law. Nothing less is required if the Director is to lead the Executive branch in managing information resources efficiently and reducing the burden of information requests upon the public. To suggest that the review required is not "substantive", not meaningful, is to suggest that the procedural requirements contained in the Paperwork Reduction Act have no teeth—that the promise to the American people that their government will ascertain the need for paperwork before asking them to provide information has no backbone.

4. The report fails to acknowledge the positive relationship between OIRA's regulatory review and "information resources management" responsibilities

As the report notes, OIRA carries out regulatory review responsibilities under Executive Orders 12291 and 12498. The report does not acknowledge the important relationship of these reviews with OIRA's responsibilities under the Paperwork Reduction Act. This Committee has previously acknowledged the utility of linking review of regulations for paperwork and other information management purposes with the review of regulations for related Presidential assignments under Executive Order. (See S.R. 96-930 p. 8)

We do not condone any abuse by the Director of OMB under either the Paperwork Reduction Act or as a result of presidential delegation of authority and assignment. We strongly believe it is the Congress', and in particular, this Committee's responsibility to hold the Director of OMB accountable for abuses of authority. As prior Congresses have demonstrated, what authority Congress places in the Director can be undone. Under the 1942 Reports Act, the predecessor law to the Paperwork Reduction Act, review responsibilities for independent regulatory agencies was moved in 1973 to the Comptroller General after controversy arose over the Director's use of the Reports Act authority. In 1980, Congress chose to reassign responsibility for the independent regulatory agencies to the Director again, but with the reservation that they may override any disapproval or action by the Director by majority vote.

The report fails to adequately recognize the relationship between the strategy of information resources management adopted by the law and managing the information aspects of regulations. Regulations are a major and growing source of the Government's information needs. They are a growing source of information burdens upon the public. The Act's information resources management strategy is also a strategy for regulatory reform. We believe the report's failure to appreciate this relationship is instrumental to several overstated observations concerning OIRA's role under the Executive Orders. For example:

Several disturbing trends have resulted from OIRA's regulatory review activity pursuant to the Reagan Executive Orders. First, OIRA has been used primarily as a regulatory review office. Second, the OIRA mission of reducing federal paperwork and coordinating federal information policy has been severely weakened by the use of OIRA for regulatory review activities.

* * * Failure to implement the law has chiefly resulted from the creation of a separate set of OIRA functions and priorities by Executive Order for purposes of regulatory review;

When President Carter signed the Paperwork Reduction Act, he referred specifically to the OMB Director's role in the Act's overall strategy, and to the relationship between the Government's information needs and regulatory reforms:

The act I'm signing today will not only regulate the regulators, but it will also allow the President, through the

Office of Management and Budget, to gain better control over the Federal Government's appetite for information from the public. For the first time it allows OMB to have the final word on many of the regulations issued by our Government. It also ensures that the public need not fill out forms nor keep records which are not previously approved by OMB. (Presidential Documents, Administration of Jimmy Carter, December 11, 1980, at 2795).

Changes and improvements are needed to the Act and to implementation of the law. But the report's assessment of what needs to be done is flawed. The management of information resources is linked to the management of regulatory based burdens.

5. The report alleges "abuses" and violations of law

We do not believe the Committee's record supports the following assertions:

* * * Finally, the Committee has found that OIRA has in several key instances breached the terms of its 1986 administrative guidelines on regulatory review established as the result of an informal agreement between then-OIRA Administrator Wendy Lee Gramm and members of the Governmental Affairs Committee.

* * * in the ten year history of OIRA, its Administrators have been selected based on qualifications to direct a regulatory review process. Such selection has been made in disregard for OIRA's statutory mission to coordinate federal information policy and has highly politicized the activities of OIRA.

* * * and in certain areas OIRA has advanced information policy in a manner which has reduced the ability of agencies to fulfill statutory missions, enforce laws, conduct oversight, and remain accountable.

* * * the Committee viewed the ten-year history of OIRA as increasingly chilling public access and use of government information.

6. The report asserts an inaccurate view of the committee's deliberations on the impact of the Supreme Court decision in regards to the Paperwork Reduction Act

During the Committee's deliberations on S. 1742, the Supreme Court issued a 7-2 opinion in *Dole v. U.S. Steelworkers of America*, 110 S.Ct.929 (1990). A majority of the Court interpreted the law to extend only to collections of information from the public which were provided to the government for its use. The Court did not find federally sponsored collections of information for third parties to be covered by the Act's requirements.

During mark-up of S. 1742, no consideration was given as to the correctness of the Court decision. This is appropriate given that S. 1742 does not pertain to the court case. As a result of a letter sent to the Committee by members of the Small Business Committee indicating an intention to raise the question of whether the protections of the Act extend to all federally sponsored information requirements of the public, including disclosure requirements, we un-

derstood this issue would be left for the full Senate to clarify. Consequently, we find the report to be misleading when it asserts:

* * * The decision sets important limitations on OIRA under the Act, and substantiates reports and allegations of overreaching by OIRA. * * * Furthermore, the Committee believes that Congress should not expand OIRA's power to control regulation.

The question of whether the requirements and protections of the Paperwork Reduction Act extend to recordkeeping requirements and disclosure requirements which are not provided to the government directly is an important question. We note that former Senator Lawton Chiles, the sponsor of the 1980 Act, submitted an amicus brief to the Court which argued that the issue of third party paperwork requirements had been specifically deliberated upon by this Committee and the House Government Operations Committee in developing the 1980 Act. Senator Chiles argued that the Act's definition of recordkeeping was intended to encompass information the public provides to third parties as well as to the government. The amicus brief cites ample supporting legislative history.

We believe the Congress should clarify whether all federally sponsored information requirements to which the public must respond are covered. Regardless of what the Court or others may conclude the Congress intended in 1942, 1980, or 1986, it is appropriate that this Congress speak to the scope of the Act's protections. The report misleads when it suggests the Committee has deliberated upon and reached a conclusion on the impact of the Court's interpretation of the Paperwork Reduction Act.

We observe further that the amendments to the Paperwork Reduction Act proposed in S. 1742 and its accompanying report both appear to add to the view that the law applies to all federally sponsored information requirements. For example, S. 1742 declares a purpose of the Act to be to "ensure the greatest possible public benefit from information collected, maintained, used, disseminated, and retained by the Federal Government". "Public benefit" carries the notion that information the government requires be collected has importance beyond the government's own use. Third party disclosure requirements are justified by agencies precisely because it is the agency's mission to benefit the public by requiring disclosure of information or the keeping of records others may need to see.

As noted by the report:

* * * While different types of government information may require different kinds of management, no information is exempt from the basic requirement that it serve a public purpose.

• We agree with this assessment, and observe it may be said of all government sponsored information requirements, whether they are provided directly to a government agency or to members of a generalized public.

7. The report's discussion of agency self-certification needs clarification

The Paperwork Reduction Act requires that all continuing information collection requests be reviewed, justified, and approved every three years. Requests which are not reviewed and properly continued are automatically terminated. Section 3507(f) declares that "An agency shall not engage in a collection of information without obtaining from the Director a control number to be displayed upon the information collection request." The effect of the public protection afforded by section 3512 is that information collection requests which do not display a current control number are unenforceable.

This "sunset" aspect of the law is intended to require agencies to (1) eliminate unnecessary paperwork demands on the public, and (2) periodically solicit public comments and consider new ideas on how to apply information technology to reduce burden and increase the quality and usefulness of information collected. The sunset requirements of the law apply to all information collection requests, including those which are specifically contained in rules promulgated in accord with the notice and comment procedures of the Administrative Procedure Act. S. 1742, as reported, maintains the comprehensive sunset requirements of the Act and reflects the Committee's continuing belief that requiring periodic review and affirmative action upon continuing information requests is good public policy.

The relationship of the Paperwork Reduction Act's requirements to those of the Administrative Procedure Act has been a focus of this Committee each time amendments to the Reports Act and its successor, the Paperwork Reduction Act, have been undertaken. For example, in 1980 the Committee worked with Senator Kennedy and others to craft a Committee accepted amendment to proceduralize the notice and comment requirements of the Administrative Procedure Act with requirements agencies and the Director must fulfill under the Paperwork Reduction Act. Part of this amendment became Section 3504(h) of the present statute.

As a result of a Justice Department legal opinion in 1982 which interpreted the terms "information collection request", a defined term in the law, and "collection of information requirement", a term found only in Section 3504(h), as unrelated and mutually exclusive, this Committee deliberated upon this relationship again in 1984 and 1986. An effect of the legal opinion was to question whether the Act's sunset requirements applied to collection of information requirements.

On both these occasions, the Committee concluded the sunset requirements of the Paperwork Reduction Act applied to all information collection requests, including those which were collection of information requirements as that term is used in section 3504(h). The Committee also concluded that the Act's sunset requirements were compatible with, and did not conflict with, the requirements of the Administrative Procedure Act. (See S. Rept. 98-576, at p. 16-17 and S. Rept. 99-347, at p. 52-53). In 1986, at this Committee's recommendation, the Congress explicitly amended the Act to clarify that

a collection of information requirement was a type of information collection request.

S. 1742 proposes to further proceduralize in statute the respective agency and OIRA responsibilities for all information collection requests which already have been previously reviewed under the Paperwork Reduction Act and are again subject to review and approval pursuant to the Act. These new procedures are largely found in the amended sections 3507(d) and 3507(j) proposed by S. 1742 as reported. They are discussed in the report's section on Agency self-certification.

Under present law the substantive standard of review for information collection requests contained in proposed rules, which are subject to notice and comment, is identical to that applicable to all other information collection requests. (See, Cong. Rec. Dec 15, 1980 S 16700 Kennedy statement.) (See also, 5 C.F.R. 1320.13(g)(3).) However, procedural limitations for the Director's review of information collection requests specifically contained in rules subject to notice and comment are prescribed by the provisions of section 3504(h). They are intended to circumscribe the manner in which the Director's authority and responsibility is to be exercised.

During deliberation on S. 1742, proposals were made to change the standard of review for "regulatory paperwork" subject to renewal and review. S. 1742 as introduced contained such proposals. The Committee considered (1) whether the standard of review to be applied as a result of the proposed section 3507(j) should be changed from that applied under existing law, and (2) what the scope of section 3507(j) should be—which information collection requests should be covered.

We observe that the standard of review contained in section 3507(j) as amended is substantively identical to the standard of review required by section 3507(i). The relevant language of section 3507(j) reads that the Administrator shall approve unless:

- (iii) the Administrator finds the agency certification to be unreasonable or not adequately supported by the record compiled by the agency;

Section 3507(i) as proposed by S. 1742 is the identical language found in section 3504(h) of the current law.

Secondly, the reach of section 3507(j) procedures is limited to collection of information requirements. Collection of information requirements are information collection requests specifically contained in a regulation. Information collection requests which are derived from, somehow associated with, or required by a regulation, but are not specifically contained in a regulation, are subject to procedures mandated by section 3507(d). The section 3507(j) provisions are not intended to apply to information collection requests which would not be specifically contained in a rulemaking in their original issuance.

In our view, it is important to recognize that S. 1742, as reported by the Committee, makes a clear distinction between information collection requests contained in regulations from those which are not. The integrity of the rulemaking process is thereby preserved. So is the responsibility of the agencies and Director to periodically

review information collection requests of all kinds with the same level of scrutiny.

EXPLANATION OF VOTES

On June 7, 1990 the Committee voted unanimously, 14-0, to report S. 1742, as amended, favorably to the full Senate. This vote followed a 7-7 vote on an amendment proposed by Senator Roth to strike section 112 of the bill.

Committee discussion over the motion to strike section 112 reflected the considerable amount of attention and deliberation given disclosure requirements by the Committee in both this and past Congresses. Historically, the Committee has championed openness and sunshine in government processes. We support and are pleased to be a part of that tradition. That tradition greatly influenced the Committee's development of the 1980 Paperwork Reduction Act and its proposed amendments to the law in 1984 and 1986. For example, as it now stands, the Act demands public participation and openly arrived decisions as a primary means of Executive branch accountability to the public and Congress. But as demonstrated by both the Sunshine Act and the Freedom of Information Act, laws which stand as monuments to open government, there are practical limits. Lines must be drawn. We believe the section 112 requirements exceed what is reasonable or practicable.

Three basic reasons formed the basis for not supporting the section 112 disclosure requirements. Director Darman of the Office of Management and Budget had informed the Committee that the requirements of section 112 and those found in section 106 involving agency disclosure would engender a veto recommendation to the President from his senior policy advisors. On behalf of the Administration, he was working with the Committee to improve upon the procedures which had been agreed upon with the Committee in 1986. The Director was personally involved in meaningful discussions with several Committee members. Since the Administration based its concerns with section 112 and section 106 on Constitutional grounds, the Director was seeking an opportunity to avoid a veto confrontation.

Secondly, the standards for disclosure to be applied to OIRA greatly exceeded what we in Congress require of ourselves and our staff in our own conduct, raising questions of whether such standards could be practically complied with and still permit OIRA to undertake its responsibilities.

Thirdly, the scope of the section 112 requirements go beyond the traditional scope of OIRA's statutorily assigned functions and to OIRA's related duties which flow from Presidential delegations of authority, notably the OIRA role to review regulations under Executive Order 12291. The section 112 requirements effectively amend the Administrative Procedure Act and raise issues of judicial enforceability and the review of presidential and Executive branch actions on a bill whose essential purpose is to provide authorization

for appropriations to OIRA. The potential confrontation with the President over section 112 and section 106 provisions jeopardizes the support for the whole of the Paperwork Reduction Act over important issues which go beyond the need to reauthorize appropriations. In this instance, we question the wisdom of proceeding this way on what are important separation of powers questions involving all three branches of the federal government.

During the June 7 mark-up, the Committee discussion following the 7-7 vote on the Roth amendment revealed considerable Committee sentiment to continue talks with Director Darman and arrive at an agreement over what OIRA would disclose in its review of rules pursuant to Executive Order as opposed to all agency submissions. The previous day, Director Darman had circulated a draft circular proposing disclosure requirements. Senators Levin, Nunn, Bingaman and Roth joined Chairman Glenn in volunteering to continue to work for an agreement with the Administration. The idea expressed was that if an agreement could be reached which could take the form of an Executive Order, then perhaps an overall amendment to the bill might be worked out on the floor of the Senate that would delete the statutory requirements of sections 112 and 106, and accommodate other concerns raised in testimony by the Administration in order to avoid a veto and gain the President's support and signature.

As a result of this note of comity and good faith, and with the understanding that issues raised by members of the Small Business Committee could await consideration by the full Senate, we seven joined the other seven Senators to report the bill to the floor. We considered the vote to report a way to meet the Chairman's desire to expedite the Committee's and the full Senate's deliberations.

CONCLUSION

The Paperwork Reduction Act is a vital statute both to assist the President in the execution of laws by the Executive branch and to protect the citizens of the United States from unnecessary and duplicative paperwork burden imposed by the government. By pinpointing responsibility for information resources management on the Director of OMB, the Congress has established a simple means to provide more effective oversight of the government's paperwork and regulatory demands upon the public. The Office of Information and Regulatory Affairs was intended as an important focal point. This Committee's oversight and periodic authorization role is crucial to the efficient operation of the entire federal government. We have undertaken this role with that seriousness in mind. Our concerns, raised in this statement, highlight not only differences between ourselves and the report's authors, but key issues surrounding OIRA and important factors that make OIRA function. The belief that appropriations for OIRA should be reauthorized and that modification is needed to the Paperwork Reduction Act is not disputed here. It is that the traditional unanimity regarding

this fundamental function of government is missing from this reauthorization attempt, and as a result this report simply elevates debate from a divided Committee to the full Senate.

BILL ROTH.
BILL COHEN.
JOHN HEINZ.
SAM NUNN.
TED STEVENS.
WARREN B. RUDMAN.
PETE WILSON.

XI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law with no change proposed is shown in roman):

UNITED STATES CODE

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

Subchapter II—Administrative Procedure

* * * * *

§ 552a. Records about individuals

(r) REPORT ON NEW SYSTEMS AND MATCHING PROGRAMS.—Each agency that proposes to establish or make a significant change in a system of records [or a matching program] *a matching program, or a routine use* shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

TITLE 44—PUBLIC PRINTING AND DOCUMENTS

* * * * *

CHAPTER 33—DISPOSAL OF RECORDS

* * * * *

§ 2107. Acceptance of records for historical preservation

(a) When it appears to the Archivist to be in the public interest, he may—

(1) accept for deposit with the National Archives of the United States the records of a Federal agency, the Congress, the Architect of the Capitol, or the Supreme Court determined

by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government;

(2) direct and effect the transfer to the National Archives of the United States of records of a Federal agency that have been in existence for more than thirty years and determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government, unless the head of the agency which has custody of them certifies in writing to the Archivist that they must be retained in his custody for use in the conduct of the regular current business of the agency;

(3) direct and effect, with the approval of the head of the originating agency, or if the existence of the agency has been terminated, then with the approval of his successor in function, if any, the transfer of records deposited or approved for deposit with the National Archives of the United States to public or educational institutions or associations; title to the records to remain vested in the United States unless otherwise authorized by Congress; and

(4) transfer materials from private sources authorized to be received by the Archivist by section 2111 of this title.

(b) Subject to the provisions of section 2906 of this title and notwithstanding any other provision of law, the Archivist or the designee of the Archivist may inspect or examine any record to determine if—

(1) an agency is in compliance with the binding guidelines issued by the Archivist; and

(2) such record has sufficient value to warrant the continued preservation by the United States Government.

§ 2906. Inspection of agency records

(a)(1) [In carrying out their respective duties and responsibilities under this chapter, the Administrator of General Services and the Archivist (or the designee of either) may inspect the records or the records management practices and programs of any Federal agency solely for the purpose of rendering recommendations for the improvement of records management practices and programs.] *In carrying out their respective duties and responsibilities under this chapter and under chapters 21, 31, 33, and 35 of this title, the Administrator of General Services and the Archivist (or the designee of either) may inspect the records or the records management practices and programs of any Federal agency for the purposes of rendering recommendations for the improvement of records management practices and programs. The Archivist (or a designee) may inspect the records of any Federal agency for the purpose of determining whether records in the custody of the agency have sufficient historical, administrative, legal, research or other value to warrant their further preservation by the government. Officers and employees of such agencies shall cooperate fully in such inspections, subject to the provisions of paragraphs (2) and (3) of this subsection.*

[(2) Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Administrator and

the Archivist, subject to the approval of the head of the agency concerned or of the President. The regulations promulgated by the Administrator and the Archivist under this paragraph shall, to the extent practicable, be identical.】

(2) *The Administrator and the Archivist shall promulgate regulations (subject to the approval of the President) to—*

(A) *provide for the inspection of records, the use of which is restricted by law; and*

(B) *provide that regulations authorizing and restricting the examination and use of such records applicable to the head of the custodial agency or to employees of that agency are applied in the same manner to the Archivist and the Administrator and to the employees of the National Archives and Records Administration and General Services Administration respectively.*

(3) If the Administrator or the Archivist (or the designee of either) inspects a record, as provided in this subsection, which is contained in a system of records which is subject to section 552a of title 5, such record shall be—

(A) maintained by the Administrator, the Archivist, or such designee as a record contained in a system of records; or

(B) deemed to be a record contained in a system of records for purposes of subsections (b), (c), and (i) of section 552a of title 5.

(b) In conducting the inspection of agency records provided for in subsection (a) *and in sections 2107 and 3303a of this title* of this section, the Administrator and the Archivist (or the designee of either) shall, in addition to complying with the provisions of law cited in subsection (a)(3), comply with all other Federal laws and be subject to the sanctions provided therein.

§ 3102. Establishment of program of management

The head of each Federal agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. The program, among other things, shall provide for

(1) effective controls over the creation and over the maintenance and use of records in the conduct of current business;

(2) cooperation with the Administrator of General Services and the Archivist in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value; and

(3) compliance with sections 2101-2117, 2501-2507, 2901-2909, and 【3101-3107, of this title and the regulations】 3301-3314, *of this title and the regulations and standards issued under them.*

§ 3302. Regulations covering lists of records for disposal, procedure for disposal, and standards for reproduction

The Archivist shall promulgate regulations, not inconsistent with this chapter *and binding on all Federal agencies*, establishing—

(1) *standards for interpreting the definition of records under section 3301,*

(2) standards for establishment and maintenance of adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency for incorporation in recordkeeping requirements to be issued by heads of agencies;

(3) procedures for the compiling and submitting to him of lists and schedules of records proposed for disposal,

(4) procedures for the disposal of records authorized for disposal, and

(5) standards for the reproduction of records by photographic or microphotographic processes with a view to the disposal of the original records.

§ 3303a. Examination by Archivist of lists and schedules of records lacking preservation value; disposal of records

(a) [The Archivist shall examine the lists and schedules submitted to him under section 3303 of this title.] *Subject to the limitations of section 2906 and notwithstanding any other provision of law, the Archivist shall examine the lists and schedules submitted under section 3303, and the Archivist or the designee of the Archivist may examine any record on such lists or schedule.* If the Archivist determines that any of the records listed in a list of schedule submitted to him do not, or will not after the lapse of the period specified, have sufficient administrative, legal, research, or other value to warrant their continued preservation by the Government, he may, after publication of notice in the Federal Register and an opportunity for interested persons to submit comment thereon—

(1) notify the agency to that effect; and

(2) empower the agency to dispose of those records in accordance with regulations promulgated under section 3302 of this title.

* * * * *

CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

* * * * *

3501. Purpose.

3502. Definitions.

3503. Office of Information and Regulatory Affairs.

3504. Authority and functions of [Director.] *Administrator.*

3505. Assignment of tasks and deadlines.

3506. Federal agency responsibilities.

3507. [Public information collection activities—submission to Director; approval and delegation.] *Approval and delegation of information collection; self-certification process.*

3508. Determination of necessity for information; hearing.

3509. Designation of central collection agency.

3510. Cooperation of agencies in making information available.

3511. Establishment and operation of Federal Information Locator System.

3512. Public protection.

3513. Director review of agency activities; reporting; agency response.

3514. Responsiveness to Congress.

3515. Administrative powers.

3516. Rules and regulations.

3517. Consultation [with other agencies and the public.] *and advisory committees.*

3518. [Effect on existing laws and regulations.] *Public disclosure and reporting.*

3519. *Effect on existing laws and regulations.*

[3519.] 3520. Access on information.

[3520.] 3521. Authorization of appropriations.

§ 3501. Purpose

【The purpose of this chapter is—

【(1) to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons;

【(2) to minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information;

【(3) to maximize the usefulness of information collected, maintained, and disseminated by the Federal Government;

【(4) to coordinate, integrate and, to the extent practicable and appropriate, make uniform Federal information policies and practices;

【(5) to ensure that automatic data processing, telecommunications, and other information technologies are acquired and used by the Federal Government in a manner which improves services delivery and program management, increases productivity, improves the quality of decisionmaking, reduces waste and fraud, and wherever practicable and appropriate, reduces the information processing burden for the Federal Government and for persons who provide information to and for the Federal Government; and

【(6) to ensure that the collection, maintenance, use and dissemination of information by the Federal Government is consistent with applicable laws relating to confidentiality, including section 552a of title 5, United States Code, known as the Privacy Act.】

The purposes of this chapter are to—

(1) ensure the greatest possible public benefit from information collected, maintained, used, disseminated, and retained by the Federal Government;

(2) eliminate any unnecessary Federal paperwork burden for individuals, businesses, educational institutions, State and local governments, and other persons;

(3) minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information;

(4) emphasize Federal information resources management as a comprehensive and integrated process for improving the efficiency and effectiveness of government information activities;

(5) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and efficiency in Government and society;

(6) ensure that automatic data processing, telecommunications, and other information technologies are acquired and used to achieve all purposes of Federal information policy under chapter 35 of title 44, United States Code;

(7) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information policies and practices;

(8) improve the accountability of the Office of Management and Budget and all Federal agencies to Congress and the public for the effective implementation of this chapter;

(9) ensure that the collection, maintenance, use, dissemination, and retention of information by the Federal Government is consistent with applicable laws, including laws relating to—

(A) confidentiality of information, including section 552a of title 5, United States Code;

(B) security of information including the Computer Security Act of 1987 (Public Law 100-235);

(C) access to information, including section 552 of title 5, United States Code;

(D) collection, dissemination, and retaining of information, including title 44, United States Code; and

(10) strengthen the partnership between the Federal Government and State and local governments in the collection and sharing of government information.

§ 3502. Definitions

As used in this chapter—

(1) the term "Administrator" means the Administrator of the Office of Information and Regulatory Affairs established under section 3503;

[(1)] (2) the term "agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include the General Accounting Office, Federal Election Commission, the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions, or Government-owned contractor-operated facilities including laboratories engaged in national defense research and production activities;

[(2)] (3) the terms "automatic data processing," "automatic data processing equipment," and "telecommunications" do not include any data processing or telecommunications system or equipment, the function, operation or use of which—

(A) involves intelligence activities;

(B) involves cryptologic activities related to national security;

(C) involves the direct command and control of military forces;

(D) involves equipment which is an integral part of a weapon or weapons system; or

(E) is critical to the direct fulfillment of military or intelligence missions, provided that this exclusion shall not include automatic data processing or telecommunications equipment used for routine administrative and business applications such as payroll, finance, logistics, and personnel management;

[(3)] (4) the term "burden" means the time, effort, or financial resources expended by persons to provide information to a Federal agency including the resources expended for reviewing instructions, searching existing data sources, compiling and maintaining the necessary data, completing and reviewing the

collection of information, and transmitting or otherwise disclosing the information involved.

[(4)] (5) the term "collection of information" means the obtaining or soliciting of facts or opinions by an agency through the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods calling for either—

(A) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

(B) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes;

[(5)] (6) the term "data element" means a distinct piece of information such as a name, term, number, abbreviation, or symbol;

[(6)] (7) the term "data element dictionary" means a system containing standard and uniform definitions and cross references for commonly used data elements;

[(7)] (8) the term "data profile" means a synopsis of the questions contained in an information collection request and the official name of the request, the location of information obtained or to be obtained through the request, a description of any compilations, analyses, or reports derived or to be derived from such information, any record retention requirements associated with the request, the agency responsible for the request, the statute authorizing the request, and any other information necessary to identify, obtain, or use the data contained in such information;

[(8)] (9) the term "Director" means the Director of the Office of Management and Budget;

[(9)] (10) the term "directory of information resources" means a catalog of information collection requests, containing a data profile for each request;

[(10)] (11) the term "independent regulatory agency" means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

[(11)] (12) the term "information collection request" means a written report form, application form, schedule, questionnaire, reporting or recordkeeping requirement, collection of information requirement, or other similar method calling for the collection of information;

[(12)] (13) the term "information referral service" means the function that assists officials and persons in obtaining access to the Federal Information Locator System;

(14) the term "information resources" includes—

(A) data and information in any format;

(B) information resource management professionals; and

(C) related resources such as information

(15) the term "information resources management" means—

(A) the process—

(i) of defining in a systematic way the information needs to effectively accomplish the agency missions, goals, and objectives;

(ii) of managing information resources to efficiently, economically, and equitably meet the defined information needs; and

(iii) of integrating the skills of individuals in the various information resources management functions set forth in section 3504 of this title,

in order to provide for the information needs of the agency in a reliable, accurate, complete, and timely manner; and

(B) such process extends through the stages of collection or creation, processing, use, dissemination, and disposition of information by agencies and includes the management activities of planning, budgeting, organizing, directing, controlling, and evaluating the use of such resources;

(16) the term "information system" means—

(A) information developed or acquired and maintained through either manual or automated means to fulfill an agency's mission, goals, or objectives;

(B) the processes and procedures to obtain, maintain, use, and disseminate information; and

(C) the related information technology resources; and

(17) the term "information technology" means the hardware and software used in connection with Government information, regardless of the technology involved, and including automatic data processing equipment, as defined under section 111(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a));

[(15)] (18) the term "person" means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision;

[(16)] (19) the term "practical utility" means the ability of an agency to use information it collects, particularly the capability to process such information in a timely and useful fashion; and

[(17)] (20) the term "recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records.

§ 3503. Office of Information and Regulatory Affairs

(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

[(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information policy and shall report directly to the Director.]

(b) The Director of the Office of Management and Budget shall be responsible and accountable for overseeing all requirements, functions, activities, and expenditures under this chapter, and shall ensure coordination of the provisions of this chapter with other functions at the Office of Management and Budget.

(c) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall be appointed with special attention to professional qualifications and credentials which shall include education, work experience, or related professional activities required to administer the functions of the Office of Information and Regulatory Affairs described under this chapter.

(d) In the preparation of the budget submitted by the President to the Congress under section 1105(a) of title 31, United States Code, in each fiscal year, the Office of Information and Regulatory Affairs shall be included as a separate line item within the budget of the Office of Management and Budget.

§ 3504. Authority and functions of [Director] Administrator

[(a) The Director shall develop and implement Federal information policies, principles, standards, and guidelines and shall provide direction and oversee the review and approval of information collection requests, the reduction of the paperwork burden, Federal statistical activities, records management activities, privacy and security of records, agency sharing and dissemination of information, and acquisition and use of automatic data processing, telecommunications, and other information technology for managing information resources. The authority of the Director under this section shall be exercised consistent with applicable law.]

(a)(1) The Administrator is authorized to administer all functions under this chapter and shall report directly to the Director.

(2) The Administrator shall develop and implement Federal information policies, principles, standards, and guidelines and shall provide direction and oversee the review and approval of information collection requests, the elimination of any unnecessary paperwork burden, Federal statistical activities, records management activities, privacy and security of records, agency sharing and dissemination of information, and acquisition and use of automatic data processing, telecommunications, and other information technology for managing

ing information resources. The authority of the Administrator under this section shall be exercised consistent with applicable law.

(3) The Administrator shall ensure that the Office of Information and Regulatory Affairs shall give balanced emphasis to all the functions under this chapter.

(4) The Administrator shall ensure that the development of information policies shall be coordinated with agencies with shared information management responsibilities under this chapter and other provisions of law.

(5) The Administrator shall coordinate the development and implementation of information policy through the establishment of interagency working groups.

(6) The Administrator shall ensure the development of formalized training programs on information resources management by appropriate entities, for Government-wide use, and educate employees of the Office of Information and Regulatory Affairs on such concepts.

(7)(A) The Administrator may initiate and conduct, with selected agencies and consenting non-federal entities as appropriate, small-scale pilot projects and similar activities to test or demonstrate the feasibility and value of changes or innovations in Federal policies, rules, regulations and agency procedures to improve information practices and related activities.

(B) The Administrator shall inform the President and the Congress of the findings and progress of such projects and activities.

(C) All Federal agencies shall cooperate to the greatest extent allowed by law with the conduct of such projects and activities.

(b) The general information policy functions of the [Director] Administrator shall include—

(1) developing and implementing uniform and consistent information resources management policies and overseeing the development of information management principles, standards, and guidelines and promoting their use;

(2) initiating and reviewing proposals for changes in legislation, regulations, and agency procedures to improve information practices, and informing the President and the Congress on the progress made therein;

(3) coordinating, through the review of budget proposals and as otherwise provided in this section, agency information practices;

(4) promoting, through the use of the Federal Information Locator System, the review of budget proposals and other methods, greater sharing of information by agencies;

(5) evaluating agency information management practices to determine their adequacy and efficiency, and to determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the [Director] Administrator, and

(6) overseeing planning for, and conduct of research with respect to, Federal collection, processing, storage, transmission, and use of information.

(c) The information collection request clearance and other paperwork control functions of the [Director] Administrator shall include—

(1) reviewing and approving information collection requests proposed by agencies;

(2) determining whether the collection of information by an agency is necessary for the proper performance of the functions of the agency; including whether the information will have practical utility for the agency;

(3) ensuring that all information collection requests—

(A) are inventoried, display a control number and, when appropriate, an expiration date;

(B) indicate the request is in accordance with the clearance requirements of section 3507; and

(C) contain a statement to inform the person receiving the request why the information is being collected, how it is to be used, and whether responses to the request are voluntary, required to obtain a benefit, or mandatory;

(4) designating as appropriate, in accordance with section 3509, a collection agency to obtain information for two or more agencies;

[(5) setting goals for reduction of the burdens of Federal information collection requests;

[(6) overseeing action on the recommendations of the Commission on Federal Paperwork: and]

(5) promoting the elimination of unnecessary burdens imposed through the collection of Federal information, with particular emphasis on those persons most heavily burdened, especially in the areas of Federal procurement, grant programs, Federal taxation, and United States international competitiveness;

(6) coordination with the Office of Federal Procurement Policy to address unnecessary paperwork burdens associated with procurement and acquisition; and

(7) designing and operating, in accordance with section 3511, the Federal Information Locator System.

[(d) The statistical policy and coordination functions of the Director shall include—

[(1) developing and periodically reviewing and, as necessary, revising long-range plans for the improved coordination and performance of the statistical activities and programs of the Federal Government;

[(2) reviewing budget proposals of agencies to assure that the proposals are consistent with such long-range plans;

[(3) coordinating, through the review of budget proposal and as otherwise provided in this chapter, the functions of the Federal Government with respect to gathering, interpreting, and disseminating statistics and statistical information;

[(4) developing and implementing Government-wide policies, principles, standards, and guidelines concerning statistical collection procedures and methods, statistical data classification, statistical information presentation and dissemination, and such statistical data sources as may be required for the administration of Federal programs;

[(5) evaluating statistical program performance and agency compliance with Government-wide policies, principles, standards, and guidelines;

[(6) integrating the functions described in paragraphs (1) through (5) of this subsection with the other information resources management functions specified in this chapter; and

[(7) appointing a chief statistician who is a trained and experienced professional statistician to carry out the functions described in paragraphs (1) through (6) of this subsection.]

(d)(1) The statistical policy and coordination functions of the Administrator shall include—

(A) coordinating and providing leadership for development of the Federal statistical system;

(B) developing and periodically reviewing and, as necessary, revising long-range plans for the improved coordination and performance of the statistical activities and programs of the Federal Government;

(C) ensuring the integrity, objectivity, impartiality, and confidentiality of the Federal statistical system;

(D) reviewing budget proposals of agencies to ensure that the proposals are consistent with such long-term plans and developing a summary and analysis of the budget submitted by the President to the Congress for each fiscal year of the allocations for all statistical activities;

(E) coordinating, through the review of Budget proposals and as otherwise provided in this chapter, the functions of the Federal Government with respect to gathering, interpreting, and disseminating statistics and statistical information;

(F) developing and implementing Government-wide policies, principles, standards, and guidelines concerning statistical collection procedures and methods, statistical data classification, statistical information presentation and dissemination, and such statistical data sources as may be required for the administration of Federal programs;

(G) evaluating statistical program performance and agency compliance with Government-wide policies, principles, standards, and guidelines;

(H) promoting the timely release of statistical data to the public;

(I) coordinating the participation of the United States in international statistical activities, such as the development of comparable statistics;

(J) preparing an annual report to submit to the Congress on the statistical policy and coordination function;

(K) integrating the functions described in this paragraph with the other information resources management functions specified in this chapter; and

(L) appointing a chief statistician who is a trained and experienced professional statistician to carry out the functions described in this paragraph.

(2) The Administrator shall establish an interagency working group on statistical policy headed by a chief statistician to coordinate agency activities in carrying out the functions under paragraph (1), consisting of the heads of the agencies with major statistical programs.

(3) The Office of Information and Regulatory Affairs shall provide opportunities for long-term training in the statistical policy

functions of the Office of Information and Regulatory Affairs to employees of the Federal Government. Each trainee shall be selected at the discretion of the Administrator based on agency requests and shall serve for at least six months and no more than one year. All costs of the training are to be paid by the agency requesting training."

(e) The records management functions of the **[Director]** Administrator shall include—

(1) providing advice and assistance to the Archivist of the United States and the Administrator of General Services in order to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information policies, principles, standards, and guidelines established under this chapter;

(2) reviewing compliance by agencies with the requirements of chapters 29, 31, and 33 of this title and with regulations promulgated by the Archivist of the United States and the Administrator of General Services thereunder; and

(3) coordinating records management policies and programs with related information programs such as information collection, statistics, automatic data processing and telecommunications, and similar activities.

(f) The privacy functions of the **[Director]** Administrator shall include—

(1) developing and implementing policies, principles, standards, and guidelines on information disclosure and confidentiality, and on safeguarding the security of information collected or maintained by or on behalf of agencies;

(2) providing agencies with advice and guidance about information security, restriction, exchange, and disclosure; **[and]**

(3) monitoring compliance with section 552a of title 5, United States Code, and related information management laws **[.]**;

(4) *overseeing the development of new information systems by Federal agencies containing personal information to ensure compliance with information policies, principles, standards, and guidelines, and existing information privacy laws; and*

(5) *conducting periodic review of agency compliance, identify problems, and report the results to the Senate Committee on Governmental Affairs and the House Committee on Government Operations.*

(g) The Federal automatic data processing (including telecommunications) functions of the **[Director]** Administrator shall include—

(1) developing and implementing policies, principles, standards, and guidelines for automatic data processing and telecommunications functions and activities of the Federal Government, and overseeing the establishment of standards under sections 111(d) of the Federal Property and Administrative Services Act of 1949;

(2) monitoring the effectiveness of, and compliance with, directives issued pursuant to sections 110 and 111 of such Act of 1949 and reviewing proposed determinations under section 111(e) of such Act;

(3) providing advice and guidance on the acquisition and use of automatic data processing and telecommunications equipment, and coordinating, through the review of budget proposals and other methods, agency proposals for acquisition and use of such equipment;

(4) promoting the use of automatic data processing and telecommunications equipment by the Federal Government to improve the effectiveness of the use and dissemination of data in the operation of Federal programs; and

(5) initiating and reviewing proposals for changes in legislation, regulations, and agency procedures to improve automatic data processing and telecommunications practices, and informing the President and the Congress of the progress made therein.

[(h)(1) As soon as practicable, but no later than publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information requirement and upon request, information necessary to make the determination required pursuant to this section.

[(2) Within sixty days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information requirement contained in the proposed rule.

[(3) When a final rule is published in the Federal Register, the agency shall explain how any collection of information requirement contained in the final rule responds to the comments, if any, filed by the Director or the public, or explain why it rejected those comments.

[(4) The Director has no authority to disapprove any collection of information requirement specifically contained in an agency rule, if he has received notice and failed to comment on the rule within sixty days of the notice of proposed rulemaking.

[(5) Nothing in this section prevents the Director, in his discretion—

[(A) from disapproving any information collection request which was not specifically required by an agency rule;

[(B) from disapproving any collection of information requirement contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection; or

[(C) from disapproving any collection of information requirement contained in a final agency rule, if the Director finds within sixty days of the publication of the final rule that the agency's response to his comments filed pursuant to paragraph (2) of this subsection was unreasonable.

[(D) from disapproving any collection of information requirement where the Director determines that the agency has substantially modified in the final rule the collection of information requirement contained in the proposed rule where the agency has not given the Director the information required in paragraph (1), with respect to the modified collection of infor-

mation requirement, at least sixty days before the issuance of the final rule.

[(6) The Director shall make publicly available any decision to disapprove a collection of information requirement contained in an agency rule, together with the reasons for such decision.

[(7) The authority of the Director under this subsection is subject to the provisions of section 3507(c).

[(8) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

[(9) There shall be no judicial review of any kind of the Director's decision to approve or not to act upon a collection of information requirement contained in an agency rule.]

(h)(1) The information dissemination functions of the Administrator shall include the responsibility to—

(A) develop policy guidelines, to be issued after notice and receipt of public comment, which shall enable Federal agencies to fulfill information dissemination functions and activities;

(B) promote policy research and development in the area of information dissemination as a basis for developing effective guidance for program and policy development in the Federal agencies;

(C) establish procedures for systematic oversight to ensure that the principles, purposes, and guidance expressed in this subsection are carried out; and

(D) coordinate the identification of priorities for developing uniform technical standards.

(2) In furthering the provisions of paragraph (1)(d)—

(A) the Department of Commerce shall, after consultation with the public and appropriate agencies, issue uniform technical standards; and

(B) the Office of Management and Budget shall encourage the use of the Department of Commerce standards through its policy guidelines and assistance, and monitor the effectiveness of such standards.

(3) Guidance issued by the Administrator under paragraph (1) shall—

(A) be developed in consultation with central information management agencies possessing Government-wide dissemination authority under law;

(B) strengthen public access to Government information, regardless of format, consistent with existing law including—

(i) making public information products and services available on a timely, equitable and equal basis to all persons; and

(ii) encouraging a diversity of public and private information products and services;

(C)(i) maintain an affirmative role for Federal agencies in the dissemination of Government information, consistent with law; and

(ii) reflect a view that a public and private sector sharing of responsibility for information dissemination is sound public policy;

(D) reflect that each agency has the final administrative responsibility for the management of its Federal information resources and its information dissemination functions;

(E) require and agency, in determining how to fulfill its public information dissemination functions, to consider—

(i) whether dissemination is required by law;

(ii) whether dissemination is necessary for the proper performance of agency functions;

(iii) whether disseminating public information would assist in public oversight of agency operations or would promote the general social or economic welfare of the United States;

(iv) if an information product or service available from other public or private sources is equivalent to an agency product or service and reasonably achieves the dissemination objectives of the agency product or service;

(v) dissemination methods that will maximize the utility of the information to the public; and

(vi) the economy and efficiency of Government operations.

§ 3505. Assignment of tasks and deadlines

[In carrying out the functions under this chapter, the Director shall—

(1) upon enactment of this Act—

[(A) set a goal to reduce the then existing burden of Federal collections of information by 15 per centum by October 1, 1982; and

[(B) for the year following, set a goal to reduce the burden which existed upon enactment by an additional 10 per centum;

(2) within one year after the effective date of this Act—

[(A) establish standards and requirements for agency audits of all major information systems and assign responsibility for conducting Governmentwide or multiagency audits, except the Director shall not assign such responsibility for the audit of major information systems used for the conduct of criminal investigations or intelligence activities as defined in section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, or for cryptologic activities that are communications security activities;

[(B) establish the Federal Information Locator System;

[(C) identify areas of duplication in information collection requests and develop a schedule and methods for eliminating duplication;

[(D) develop a proposal to augment the Federal Information Locator System to include data profiles of major information holdings of agencies (used in the conduct of their operations) which are not otherwise required by this chapter to be included in the System; and

[(E) identify initiatives which may achieve a 10 per centum reduction in the burden of Federal collections of information associated with the administration of Federal grant programs;

[(3) within two years after the effective date of this Act—

[(A) establish a schedule and a management control system to ensure that practices and programs of information handling disciplines, including records management, are appropriately integrated with the information policies mandated by this chapter;

[(B) identifying initiatives to improve productivity in Federal operations using information processing technology;

[(C) develop a program of (i) enforce Federal information processing standards, particularly software language standards, at all Federal installations; and (ii) revitalize the standards development program established pursuant to section 759(f)(2) of title 40, United States Code, separating it from peripheral technical assistance functions and directing it to the most productive areas;

[(D) complete action on recommendations of the Commission on Federal Paperwork by implementing, implementing with modification or rejecting such recommendations including, where necessary, development of legislation to implement such recommendations;

[(E) develop and annually revise, in consultation with the Administrator of General Services, a 5-year plan for meeting the automatic data processing equipment (including telecommunications) and other information technology needs of the Federal Government in accordance with the requirements of sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757, 759) and the purposes of this chapter; and

[(F) submit to the President and the Congress legislative proposals to remove inconsistencies in laws and practices involving private confidentiality, and disclosure of information; and

[(4) upon the enactment of the Paperwork Reduction Authorization Act of 1986—

[(A) set a goal to reduce, by September 30, 1987, the burden of Federal collections of information existing on September 30, 1986, by at least 5 percent; and

[(B) for the fiscal year beginning on October 1, 1987, and each of the next two fiscal years, set a goal to reduce the burden of Federal collections of information existing at the end of the immediately preceding fiscal year by at least 5 percent;

[(5) maintain a comprehensive set of information resources management policies; and

[(6) within one year after the date of enactment of the Paperwork Reduction Reauthorization Act of 1986—

[(A) issue, in consultation with the Administrator of General Services, principles, standards, and guidelines to implement the policies described in paragraph (5);

[(B) report to the Congress on the feasibility and means of enhancing public access, including access by electronic media, to information relating to information collection re-

quests required by this chapter to be made available to the public; and

[(C) identify further initiatives to reduce the burden of Federal collections of information associated with the administration of Federal grant programs.]

§ 3505. Paperwork reduction goals

In carrying out the functions under this chapter, the Administrator shall upon the date of the enactment of the Federal Information Resources Management Act—

(1) identify initiatives to eliminate any unnecessary burden of Federal collections of information associated with individuals, businesses, educational institutions, and State and local governments, particularly with respect to any unnecessary burden associated with Federal procurement, grant programs, Federal taxation and United States international competitiveness; and

(2) identify areas of unnecessary duplication in information collection requests and develop methods for eliminating unnecessary duplications.

§ 3506. Federal agency responsibilities

(a) [Each agency] The head of each agency has administrative responsibility for the agency's information management activities and shall be responsible for carrying out its information management activities in an efficient, effective, and economical manner, and for complying with the information policies, principles, standards, and guidelines prescribed by the [Director,] Administrator.

(b)(1) The head of each agency shall designate, within three months after the effective date of this Act, a senior official or, in the case of military departments, and the Office of the Secretary of Defense, officials who report directly to such agency head to carry out the responsibilities of the agency under this chapter. If more than one official is appointed for the military departments the respective duties of the official shall be clearly delineated.

(2)(A) Each official designated under paragraph (1) shall appoint a Chief Information Resources Management Official who shall—

(i) report to the senior official (except in the case that the Chief Information Resources Management Official may be the senior official);

(ii) be in the competitive service or in the senior executive service (except for that official designated within the Tennessee Valley Authority); and

(iii) be a career appointee.

(B) Any positions designated under this paragraph shall be career reserve positions (except for positions within the Tennessee Valley Authority).

(C) The Chief Information Resource Management Official shall assist in agency information needs assessments and in the deployment of appropriate information technology to gather, process, use, and disseminate information that is—

(i) critical to successful accomplishment of program goals and agency mission; or

(ii) essential for efficient and effective agency management, particularly financial management.

(3) Officials designated under paragraph (2) shall be well qualified through experience or training to carry out the programs and activities authorized under this chapter. Such officials shall be sufficiently independent of program responsibility, but shall work with program officials in fulfilling the requirements of subsection (c).

(c) Each agency shall—

(1) establish an agency-wide program of information resources management;

(2) develop, implement, and evaluate formalized training programs in consultation with appropriate agencies, on information resources management concepts, and educate program officials about information resources management as a managerial discipline requiring all managers to take responsibility for life cycle management of information resources;

(3) develop information systems, processes and procedures that—

(A) enhance the sharing of common data across program and agency lines consistent with law; and

(B) maximize the usefulness and timely release of Government information to all users within and outside the agency, including the public where appropriate,"

[(1)] *systematically inventory its major information systems and periodically review its information resources management activities;*

(4) systematically inventory and maintain current, complete records of the agency's information resources, including its major information systems, its automatic data processing equipment, and, except for good cause shown, its information resource management professionals, for use in developing and updating the agency's information resources management plans and for informing the public, consistent with other provisions of law;

[(2)] *(5) ensure its information systems do not overlap each other or duplicate the systems of other agencies;*

[(3)] *(6) develop procedures for assessing the paperwork and reporting burden of proposed legislation affecting such agency;*

[(4)] *(7) assign to the official designated under subsection (b) the responsibility for the conduct of and accountability for any acquisitions made pursuant to a delegation of authority under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759);*

[(5)] *(8) ensure that information collection requests required by law or to obtain a benefit, and submitted to nine or fewer persons, contain a statement to inform the person receiving the request that the request is not subject to the requirements of section 3507 of this chapter; and*

[(6)] *(9) implement applicable Government-wide and agency information policies, principles, standards, and guidelines with respect to information collection, paperwork reduction, statistical activities, records management activities, privacy and security of records, sharing and dissemination and retaining of information, acquisition and use of information technology, and other information resource management functions;*

(10) establish and maintain a system for dissemination of information, regardless of format, that shall—

(A) ensure that the public has timely, equitable, and equal access to the agency's public information products and services and that agency information dissemination programs disseminate agency public information products and services in an efficient, effective, and economical manner;

(B) plan and budget for information dissemination at the time information is created or collected, and at other appropriate steps during the information life cycle;

(C) provide to the public adequate advance notice when the agency initiates, terminates, or significantly modifies significant public information products and services; and

(D) provide to the Superintendent of Documents for distribution to the Federal Depository Library Program all publications required by chapter 19 of this title to be made available;

[(11) periodically evaluate and, as needed, improve the accuracy, completeness, and reliability of data and records contained within Federal information systems; and

[(12) develop and annually revise a 5-year plan, in accordance with appropriate guidance provided by the Director, for meeting the agency's information technology needs.]

(11) consistent with Government-wide policies and guidance periodically evaluate and, as needed, improve, the accuracy, completeness, reliability, and timeliness of data and records contained within Federal information systems and the capabilities of such systems for ensuring—

(A) public access to public information; and

(B) privacy, confidentiality, and security;

(12) develop and annually update a five-year information resources management plan, in accordance with the appropriate guidelines issued by the Office of Information and Regulatory Affairs for meeting the agency's information and information technology needs; and

(H) by adding at the end thereof the following new paragraphs:

(13) ensure appropriate coordination and integration of the agency's information resources management plan with the agency's strategic plan, budget, and financial management systems; and

(14) in developing information systems, implement applicable Government-wide and agency policies, principals, standards and guidelines for financial management systems.

[(d) The head of each agency shall establish such procedures as necessary to ensure the compliance of the agency with the requirements of the Federal Information Locator System, including necessary screening and compliance activities.]

(d) In carrying out functions under this chapter and any other functions involving review (not specifically authorized by this chapter) by the Office of Information and Regulatory Affairs of agency activities, the head of each agency shall establish and maintain a public file for its activities under review by the Office of Informa-

tion and Regulatory Affairs. The agency head shall make such file available in the public reading room at the agency when any written materials, regardless of format, are provided to or received from the Office of Information and Regulatory Affairs by an agency. Such public file shall include with respect to the activity—

(1) copies of all written materials regardless of format which the agency provides to or receives from the Office of Information and Regulatory Affairs;

(2) information about all submissions made by the agency to the Office of Information and Regulatory Affairs, including—

(A) the date of the submission;

(B) the nature of the agency activity with respect to which the submission is made; and

(C) the name of the person at the Office of Information and Regulatory Affairs to whom the submission is made; and

(3) an explanation of all changes in the agency activity made as a result of recommendations by the Office of Information and Regulatory Affairs.

(e) The head of each agency, or the official designated under subsection (b), shall establish a process for the review of each collection of information before it is submitted to the Administrator for review and approval under this chapter. At a minimum, this official shall ensure that the process—

(1) is sufficiently independent of program responsibilities to evaluate fairly whether each collection of information should be carried out;

(2) has sufficient resources to carry out such responsibility effectively; and

(3) provides agency authority independent of agency program officers to approve, disapprove, and make needed improvements in any agency collection of information.

(f) Under the process established in subsection (e), the senior official shall certify to the Administrator that—

(1) the collection of information and any related instructions—

(A) are necessary for the proper performance of the agency's functions and are not unnecessarily burdensome;

(B) are not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(C) have practical utility;

(D) are written using plain and unambiguous terminology and are understandable to those who are to respond; and

(E) explain the need and ultimate use of the information to be collected, and the importance of accurate and timely response; and

(2) the agency has taken necessary steps—

(A) to give notice to and consult with interested agencies and members of the public in order to enhance the clarity of that collection of information and to minimize its burden on respondents; and

(B) to plan and allocate resources for the effective and efficient management and use of the information to be obtained.

§ 3507. [Public information collection activities—Submission to Director; approval and delegation] *Approval and delegation of information collection; self-certification process*

(a) An agency shall not conduct or sponsor the collection of information unless, in advance of the adoption or revision of the request for collection of such information—

(1) the agency has taken actions, including consultation with the **[Director] Administrator** to—

(A) eliminate, through the use of the Federal Information Locator System and other means, information collections which seek to obtain information available from another source within the Federal Government;

(B) reduce to the extent practicable and appropriate the burden on persons who will provide information to the agency; and

(C) formulate plans for tabulating the information in a manner which will enhance its usefulness to other agencies and to the public;

(2) the agency (A) has submitted to the **[Director] Administrator** the proposed information collection request, copies of pertinent regulations and other related materials as the **[Director] Administrator** may specify, and an explanation of actions taken to carry out paragraph (1) of this subsection, and (B) has prepared a notice to be published in the Federal Register stating that the agency has made such submission and setting forth a title for the information collection request, *a summary of the request* a brief description of the need for the information and its proposed use, a description of the likely respondents and proposed frequency of response to the information collection request, and an estimate of the burden *and benefit* that will result from the information collection request; **[and]** *and given notice of a period of not less than 30 days for submission of comments by the public, and identification of an official at the agency and the Office of Information and Regulatory Affairs to whom comments may be submitted, including an address for each official;*

(3) *the agency provides at least 30 days for public comment to the agency and the Office of Information and Regulatory Affairs after publication of notice in the Federal Register, and the agency and the Administrator consider comments received regarding the proposed collection of information; and*

[(3)] (4) the **[Director] Administrator** has approved the proposed information collection request, or the period for review of information collection requests by the **[Director] Administrator** but not before the thirty-day public comment period has concluded, provided under subsection (b) has elapsed.

(b) The **[Director] Administrator** shall, within sixty days of receipt of a proposed information collection request, *but not before the thirty-day public comment period has concluded*, notify the agency involved of the decision to approve or disapprove the request and shall make such decisions, including an explanation thereof, publicly available. If the **[Director] Administrator**, deter-

mines that a request submitted for review cannot be reviewed within sixty days, the [Director] Administrator may, after notice to the agency involved, extend the review period for an additional thirty days. If the [Director] Administrator does not notify the agency of an extension, denial, or approval within sixty days (or, if the [Director] Administrator has extended the review period for an additional thirty days and does not notify the agency of a denial or approval within the time of the extension), a control number shall be assigned without further delay, the approval may be inferred, and the agency may collect the information for not more than one year. *The Administrator shall provide a written explanation to be placed in the public file and made available upon request for any information collection request reviewed by the Office of Information and Regulatory Affairs, the reasons for any disapproval or modification of a substantive or*

(c) Any disapproval by the [Director] Administrator, in whole or in part, of a proposed information collection request of an independent regulatory agency, or an exercise of authority under [section 3504(h) or 3509] subsection (i) of this section or section 3509 concerning such an agency, may be voided, if the agency by a majority vote of its members overrides the [Director's] Administrator's disapproval or exercise of authority. The agency shall certify each override to the [Director] Administrator, shall explain the reasons for exercising the override authority. Where the override concerns an information collection request, the [Director] Administrator shall without further delay assign a control number to such request, and such override shall be valid for a period of three years.

(d) (1) [The Director] The Administrator may not approve an information collection request for a period in excess of three years.

(2)(A) *If the head of the agency, or the designated senior official, decides to seek extension of the Administrator's approval granted for a currently approved information collection request, the agency shall, through the notice prescribed in subsection (a)(2)(B) and such other practicable steps as may be reasonable, seek comment from the agencies, and the public on the continued need for, and burden imposed by, the collection of information.*

(B) *Thereafter, but no later than sixty days before the expiration date of the control number assigned by the Administrator for the currently approved information collection request, the agency shall—*

(i) evaluate the public comments received;

(ii) conduct the review established by section 3506(e); and

(iii) provide to the Administrator the certification required by section 3506(f), including the text of the certification and any additional relevant information regarding how the information collection request comports with the principles and requirements of this chapter.

(C) *Upon receipt of such certification, and prior to the expiration of the control number for that information collection request, the Administrator shall—*

(i) assure that the agency has taken the actions specified in section 3506(f)(2);

(ii) evaluate the public comments received by the agency or by the Administrator;

(iii) determine whether the agency certification complies with the standards set forth in section 3506(f)(1); and

(iv) approve or disapprove the information collection request pursuant to this chapter.

(3) If a certification is not provided to the Administrator prior to the beginning of the sixty-day period before the expiration of the control number as provided by paragraph (2)(B), the agency shall submit the information collection request for review and approval or disapproval under this chapter.

(4) An agency may not make a substantive or material modification to an information collection request after it has been approved by the Administrator, unless the modification has been submitted to the Administrator for review and approval or disapproval under this chapter."

(e) If the [Director] Administrator finds that a senior official of an agency designated pursuant to section 3506(b) is sufficiently independent of program responsibility to evaluate fairly whether proposed information collection requests should be approved and has sufficient resources to carry out this responsibility effectively, the [Director] Administrator may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed requests in specific program areas, for specific purposes, or for all agency purposes. A delegation by the [Director] Administrator under this section shall not preclude the [Director] Administrator from reviewing individual information collection requests if the [Director] Administrator determines that circumstances warrant such a review. The [Director] Administrator shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the [Director] Administrator any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the [Director] Administrator.

(f) An agency shall not engage in a collection of information without obtaining from the [Director] Administrator a control number to be displayed upon the information collection request.

(g) If an agency head determines a collection of information (1) is needed prior to the expiration of the sixty-day period for the review of information collection requests established pursuant to subsection (b), (2) is essential to the mission of the agency, and (3) the agency cannot reasonably comply with the provisions of this chapter within such sixty-day period because (A) public harm will result if normal clearance procedures are followed, or (B) an unanticipated event has occurred and the use of normal clearance procedures will prevent or disrupt the collection of information related to the event or will cause a statutory deadline to be missed, the agency head may request the [Director] Administrator to authorize such collection of information prior to expiration of such sixty-day period. The [Director] Administrator shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the information collection request a control number. Any collection of information con-

ducted pursuant to this subsection may be conducted without compliance with the provisions of this chapter for a maximum of ninety days after the date on which the [Director] Administrator received the request to authorize such collection.

(h) Any written communication to the Administrator of the Office of Information and Regulatory Affairs or to any employee thereof from any person not employed by the Federal Government or from an agency concerning a proposed information collection request, and any written communication from the Administrator or employee of the Office to such person or agency concerning such proposal, shall be made available to the public. This [subsection] chapter shall not require the disclosure of any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

(i)(1) As soon as practicable, but no later than publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Administrator a copy of any proposed rule which contains a collection of information requirement and upon request, information necessary to make the determination required pursuant to this chapter.

(2) Within sixty days after the notice of proposed rulemaking is published in the Federal Register, the Administrator may file public comments pursuant to the standards set forth in section 3508 on the collection of information requirement contained in the proposed rule.

(3) When a final rule is published in the Federal Register, the agency shall explain how any collection of information requirement contained in the final rule responds to the comments, if any, filed by the Administrator or the public, or explain why the agency rejected those comments.

(4) The Administrator has no authority to disapprove any collection of information requirement specifically contained in an agency rule, if the Administrator has received notice and failed to comment on the rule within sixty days of the notice of proposed rulemaking.

(5) No provision of this section may be construed to limit the Administrator, in his discretion from—

(A) disapproving any information collection request which was not specifically required by an agency rule;

(B) disapproving any collection of information requirement contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

(C) disapproving any collection of information requirement contained in a final agency rule, if the Administrator finds within sixty days of the publication of the final rule that the agency's response to the comments of the Administrator filed pursuant to paragraph (2) of this subsection was unreasonable; or

(D) disapproving any collection of information requirement where the Administrator determines that the agency has substantially modified in the final rule the collection of information requirement contained in the proposed rule where the agency has not given the Administrator the information re-

quired in paragraph (1), with respect to the modified collection of information requirement, at least sixty days before the issuance of the final rule.

(6) The Administrator shall make publicly available any decision to disapprove a collection of information requirement contained in an agency rule, together with the reasons for such decision.

(7) The authority of the Administrator under this subsection is subject to the provisions of subsection (c).

(8) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

(9) The decision of the Administrator to approve or not to act upon a collection of information requirement contained in an agency rule shall not be subject to judicial review.

(j)(1) If the head of the agency, or the designated senior official, decides to seek extension of the Administrator's approval granted for a currently approved collection of information requirement, the agency shall, through the notice prescribed in subsection (a)(2)(B) and such other practicable steps as may be reasonable, seek comment from the agencies, and the public on the continued need for, and the burden imposed by, the collection of information requirement.

(2) Thereafter, but no later than sixty days before the expiration date of the control number assigned by the Administrator for the currently approved collection of information requirement, the agency shall—

(A) evaluate the public comments received;

(B) conduct the review established by section 3506(e); and;

(C) provide to the Administrator the certification required by section 3506(f), including the text of the certification and any additional relevant information regarding how the collection of information requirement comports with the principles and requirements of this chapter.

(3) Upon receipt of such certification, and prior to the expiration of the control number for that collection of information requirement, the Administrator shall—

(A) assure that the agency has taken the actions specified in section 3506(f)(2);

(B) evaluate the public comments received by the agency or by the Administrator;

(C) determine whether the agency certification complies with the standards set forth in section 3506(f)(1); and

(D) approve, unless—

(i) the agency has failed to comply with paragraph (1), (2), or (3) of this subsection;

(ii) the agency proposes to make substantive or material modification to the collection of information requirement;

(iii) the Administrator finds the agency certification to be unreasonable or not adequately supported by the record compiled by the agency; or

(iv) the Administrator determines that the record upon which the agency made the certification is not complete.

(4) If, under paragraph (3), the Administrator disapproves or recommends or instructs the agency to make a substantive or material

change to a collection of information requirement, the Administrator shall—

(A) publish an explanation thereof in the Federal Register; and

(B) instruct the agency to undertake a rulemaking limited to consideration of changes to the collection of information requirement and thereafter to submit the collection of information requirement for approval of disapproval under section 3507(i).

(5) Nothing in this subsection affects the review process for a collection of information requirement, including a proposed change to an existing collection of information requirement, under section 3507(i) with respect to such collection of information requirement.

(6) The Administrator may not approve a collection of information requirement for a period in excess of three years.

§ 3508. Determination of necessity for information; hearing

Before approving a proposed information collection request, the **[Director] Administrator** shall determine whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. Before making a determination the **[Director] Administrator** may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the **[Director] Administrator** determines that the collection of information by an agency is unnecessary, for any reason, the agency may not engage in the collection of the information.

§ 3509. Designation of central collection agency

The **[Director] Administrator** may designate a central collection agency to obtain information for two or more agencies if the **[Director] Administrator** determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with any applicable law. In such cases the **[Director] Administrator** shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by it may not obtain for itself information which it is the duty of the collection agency to obtain. The **[Director] Administrator** may modify the designation from time to time as circumstances require. The authority herein is subject to the provisions of section 3507(c) of this chapter.

§ 3510. Cooperation of agencies in making information available

(a) The **[Director] Administrator** may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained pursuant to an information collection request if the disclosure is not inconsistent with any applicable law.

(b) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penal-

ties which relate to the unlawful disclosure of information) apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information. The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

§ 3511. Establishment and operation of Federal Information Locator System

[(a) There is established in the Office of Information and Regulatory Affairs a Federal Information Locator System (hereafter in this section referred to as the "system") which shall be composed of a directory of information resources, a data element dictionary, and an information referral service. The system shall serve as the authoritative register of all information collection requests, and shall be designed so as to assist agencies and the public in locating existing Government information derived from information collection requests.

[(b) In designing and operating the System, the Director shall—

[(1) design and operate an indexing system for the System;

[(2) require the head of each agency to prepare in a form specified by the Director, and to submit to the Director for inclusion in the System, a data profile for each information collection request of such agency;

[(3) compare data profiles for proposed information collection requests against existing profiles in the System, and make available the results of such comparison to—

[(A) agency officials who are planning new information collection activities; and

[(B) on request, members of the general public; and

[(4) ensure that no actual data, except descriptive data profiles necessary to identify duplicative data or to locate information, are contained within the System.]

(a) *The Administrator shall cause to be established and maintained a Federal Information Locator System (hereinafter in this section referred to as the 'system'), which shall—*

(1) serve as a comprehensive inventory, and as the authoritative register, of all information collection requests by the Federal Government to the public; and

(2) be designed to assist agencies and the public in locating public information.

(b) *In designing the system, the Administrator shall—*

(1) designate as necessary one or more agencies to operate the system;

(2) require the head of each agency to prepare in a form to be specified by the Administrator, and to submit for inclusion in the system, a data profile for each—

(A) system of records of the agency required to be identified under section 552a of title 5; and

(B) information collection request and each information collection requirement approved by the Administrator pursuant to section 3506;

(3) ensure that no information which is not public information is included in the system.

(c) Within one year after the date of the enactment of the Federal Information Resources Management Act, the Administrator shall—

(1) determine, in consultation with other agencies and the Advisory Committee on Information Policy, the optimal composition of the system in order to accomplish its purposes; and

(2) report to the Senate Committee on Governmental Affairs and the House Committee on Government Operations on the status of the development and implementation of the system, including the Administrator's determination as to the composition of the system and the appropriate operating entity.

(d) The Administrator shall on an ongoing basis review the effectiveness of the Federal Information Locator System.

§ 3512. Public protection

Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the **[Director]** Administrator or fails to state that such request is not subject to this chapter.

§ 3513. **[Director] Administrator review of agency activities; reporting; agency response**

(a) The **[Director]** Administrator shall, with the advice and assistance of the Administrator of General Services and the Archivist of the United States, selectively review, at least once every three years the information management activities of each agency to ascertain their adequacy and efficiency. In evaluating the adequacy and efficiency of such activities, the **[Director]** Administrator shall pay particular attention to whether the agency has complied with section 3506.

(b) The **[Director]** Administrator shall report the results of the reviews to the appropriate agency head, the House Committee on Government Operations, the Senate Committee on Governmental Affairs, the House and Senate Committees on Appropriations, and the committees of the Congress having jurisdiction over legislation relating to the operations of the agency involved.

(c) Each agency which receives a report pursuant to subsection (b) shall, within sixty days after receipt of such report, prepare and transmit to the **[Director]** Administrator the House Committee on Government Operations, the Senate Committee on Governmental Affairs, the House and Senate Committees on Appropriations, and the committees of the Congress having jurisdiction over legislation relating to the operations of the agency, a written statement responding to the **[Director's]** Administrator's report, including a description of any measures taken to alleviate or remove any problems or deficiencies identified in such report.

(d) The Administrator shall on an ongoing basis review standards and requirements for agency audits for all major information sys-

tems and assign responsibility for conducting Government-wide or multiagency audits (except the Administrator may not assign such responsibility for the audit of major information systems used for the conduct of criminal investigations or intelligence activities as defined in section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, or for cryptologic activities that are communications security activities.

(e) The Administrator shall on an ongoing basis—

(1) establish and review a schedule and a management control system to ensure that practices and programs of information handling disciplines, including records management, are appropriately integrated with the information policies mandated by this chapter;

(2) identify initiatives to improve productivity in Federal operations using information processing technology; and

(3) develop and review a program to—

(A) enforce Federal information processing standards, particularly software language standards, at all Federal installations;

(B) revitalize the standards development program established under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)), as amended by the Computer Security Act (Public Law 100-235); and

(C) separate such program from peripheral technical assistance functions and direct such program to the most productive areas; and

(4) develop and annually revise in consultation with the Administrator of General Services, the Secretary of Commerce, and the Archivist of the United States, a five-year plan for information resources management, which shall include—

(A) plans for managing information throughout its life cycle from collection through dissemination and disposition, and

(B) plans for meeting the automatic data processing equipment (including telecommunications) needs of the Federal Government in accordance with the requirements of sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759) and the purposes of this chapter.

§ 3514. Responsiveness to Congress

(a) The [Director] Administrator shall keep the Congress and its committees fully and currently informed of the major activities under this chapter, and shall submit a report thereon to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the [Director] Administrator determines necessary. The [Director] Administrator shall include in any such report—

(1) proposals for legislative action needed to improve Federal information management, including, with respect to information collection, recommendations to reduce the burden on individuals, small businesses, State and local governments, and other persons;

(2) a compilation of legislative impediments to the collection of information which the **[Director]** *Administrator* concludes that an agency needs but does not have authority to collect;

(3) an analysis by agency, and by categories the **[Director]** *Administrator* finds useful and practicable, describing the estimated reporting hours required of persons by information collection requests, including to the extent practicable the direct budgetary costs of the agencies and identification of statutes and regulations which impose the greatest number of reporting hours;

(4) a summary of accomplishments and planned initiatives to reduce burdens of Federal information collection requests;

(5) a tabulation of areas of duplication in agency information collection requests identified during the preceding year and efforts made to preclude the collection of duplicate information, including designations of central collection agencies;

(6) a list of each instance in which an agency engaged in the collection of information under the authority of section 3507(g) and an identification of each agency involved;

(7) a list of all violations of provisions of this chapter and rules, regulations, guidelines, policies, and procedures issued pursuant to this chapter;

(8) with respect to recommendations of the Commission on Federal Paperwork—

(A) a description of the specific actions taken on or planned for each recommendation;

(B) a target date for implementing each recommendation accepted but not implemented; and

(C) an explanation of the reasons for any delay in completing action on such recommendations; and

(9)(A) a summary of accomplishments in the improvement of, and planned initiatives to improve, Federal information resources management within agencies;

(B) a detailed statement with respect to each agency of new initiatives to acquire information technology to improve such management; and

(C) an analysis of the extent to which the policies, principles, standards, and guidelines issued and maintained pursuant to paragraphs (5) and (6) of section 3505 of this title promote or deter such new initiatives; **[and]**

(10) with respect to the statistical policy and coordination functions described in section 3504(d) of this title—

(A) a description of the specific actions taken, or planned to be taken, to carry out each such function;

(B) a description of the status of each major statistical program, including information on—

(i) any improvements in each such program;

(ii) any program which has been reduced or eliminated; and

(iii) the budget for each such program for the previous fiscal year and the fiscal year in progress and the budget proposed for each such program for the next fiscal year; and

(C) a description and summary of the long-range plans currently in effect for the major Federal statistical activities and programs.

(11) a description and summary of actions taken with respect to dissemination functions described under section 3504(h) of this title;

(12) a summary of the results of selective reviews performed in accordance with section 3513 of this title by Federal agencies of the adequacy and efficiency of their information resources management activities;

(13) the report under the Privacy Act of 1974, when required by subsection (s) of section 552a of title 5, United States Code; and

(14) the report on matching programs, when required by subsection (u)(6) of section 552a of title 5, United States Code.

(b) The preparation of any report required by this section shall not increase the collection of information burden on persons outside the Federal Government.

(c) Within one year after the date of the enactment of the Federal Information Resources Management Act the Administrator shall submit a report to the Senate Committee on Governmental Affairs and the House Committee on Government Operations—

(1) on the Federal demonstration project in federally sponsored research that—

(A) comprehensively lists all information collection requests subject to the requirements of the provisions of this chapter together with estimates of the associated burdens;

(B) specifically identifies information requests subject to the provisions of this chapter which have not been justified by agencies and approved by the Administrator; and

(C) provides recommendations which would eliminate any unnecessary burden associated with such requests while providing adequate accountability of expenditures;

(2) on the progress of the initiatives identified under section 3505(1); and

(3) on the results of the elimination of any unnecessary duplication associated with the review under section 3503(2).

(d) Within one year after the date of the enactment of the Federal Information Resources Management Act, the Administrator shall report to the Congress, after consultation with other agencies and the Advisory Committee on Information Policy, on the feasibility and means of establishing a comprehensive inventory and authoritative register of all information dissemination products and services disseminated by the Federal Government.

§ 3515. Administrative powers

Upon the request of the [Director] Administrator each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the [Director] Administrator for the performance of functions under this chapter.

§ 3516. Rules and regulations

The **[Director]** *Administrator* shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter.

§ 3517. Consultation **[with other agencies and the public]** and *advisory committees*

[In development of information policies, plans, rules, regulations, procedures, and guidelines and in reviewing information collection requests, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.]

(a) *In reviewing information collection requests, the Administrator shall provide interested agencies and persons timely opportunity to comment.*

(b) *In developing information and statistical policies, plans, rules, regulations, procedures, and guidelines, the Administrator shall regularly consult with information providers, users, and other interested parties, including the advisory committees established under the authority granted in this section.*

(c)(1) *The Administrator shall establish an Advisory Committee on Information Policy to advise in carrying out the functions assigned under section 3504(b) and an Advisory Committee on Statistical Policy to advise in carrying out the functions assigned under section 3504(d)(1).*

(2) *Each such committee shall consist of no less than twenty members.*

(d) *Any advisory committee established by the Administrator shall—*

(1) be broadly representative of the groups with an interest in the relevant policy area;

(2) include representatives of educational institutions, businesses, State and local governments, labor, public interest groups, and any other appropriate members.

(3) provide for a two year term for members appointed by the Administrator, except that one-half of the initial appointments be made for a term of three years;

(4) provide that an individual may be reappointed to the committee for any number of terms;

(5) provide that appointments shall be made without regard to political affiliation; and

(6) comply with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) *No later than one hundred and eighty days after the date of the enactment of the Federal Information Resources Management Act, the Administrator shall complete the initial appointment of members to the Advisory Committee on Information Policy and the Advisory Committee on Statistical Policy.*

§ 3518. **[Effect on existing laws and regulations]** *Public disclosure and reporting*

(a) *In carrying out the functions under the provisions of this chapter and any other functions involving review (not specifically authorized by this chapter) by the Office of Information and Regula-*

tory Affairs, the Administrator shall establish and maintain a public file for each agency activity under review in the public reading room of the Office of Information Regulatory affairs.

(b)(1) The Administrator shall immediately create the public file upon receiving written material, regardless of format, from an agency, which initiates a review of agency activity, and such material shall be placed in such file.

(2) Upon receiving any additional written materials, regardless of format, related to the review of the agency activity, the Administrator shall make such materials available in each public file, established under paragraph (1), no later than five calendar days after the Office of Information and Regulatory affairs receives or provides such materials, including—

(A) copies of all written materials, regardless of format, related to any review activity which are received or provided by the Office of Information and regulatory affairs from or to—

(i) an officer or employee of the agency conducting the activity, and officers or employees of other agencies;

(ii) an officer or employee of the Office of Information and Regulatory Affairs; or

(iii) any person outside the Federal Government;

(B) copies of any drafts of pre-rulemaking, advanced notice, or notice of rulemaking; and

(C) copies of any proposed or final rulemaking.

(3) Nothing in the provisions of paragraph (2) may be construed to require the public disclosure of any communication between the Office of Management and budget and any other office within the Executive Office of the President.

(c) The Administrator shall place in the appropriate public file a notice of each meeting attended by employees of the Office of Information and Regulatory Affairs with persons outside the Federal Government relating to a review activity within five calendar days of such meeting.

(d) Within five calendar days after the conclusion of the review of an agency activity by the Office of Information and Regulatory Affairs, the administrator shall place in each public file—

(1) a summary of any changes made as a result of recommendations or actions by the Office of Information and Regulatory Affairs during the review of an agency activity, including reasons and authority for such changes; and

(2) an explanation of any action taken as a result of a review of any submission.

(e)(1) At the end of each calendar month, the Administrator shall make public and place in the public reading room of the Office of Information and Regulatory Affairs a list of all proposed or final rules which are submitted for review by the Office of Information and Regulatory Affairs and the estimated length of the review of each.

(2) The Administrator shall place in the public reading room of the Office of Information and Regulatory Affairs all written materials received from persons outside the Federal Government concerning any agency rulemaking not under review.

(3) The Administrator of the Office of Information and Regulatory Affairs shall—

(A) send the appropriate agencies copies of all written material regardless of format concerning an agency rulemaking activity under review, that such office receives from persons who are not employees of the Federal Government;

(B) advise the appropriate agencies on the substance of all oral communications concerning an agency rulemaking activity under review that the Office of Information and Regulatory Affairs has with persons who are not employees of the Federal Government; and

(C) invite the appropriate agency heads to all scheduled meetings with persons who are not employees of the Federal Government concerning an agency rulemaking activity under review.

(4) Only the Administrator and Deputy Administrator of the Office of Information and Regulatory Affairs may communicate with any person who is not employed by the Federal Government on regulations submitted to such office for review.

(f)(1) The Administrator shall complete review of any regulatory activity of an agency, no later than the earlier of—

(A) sixty days after the date of the submission of regulatory activity to the Office of Management and Budget by the agency; or

(B) any date established by statute or court order for completion of the regulatory review activity.

(2) If the Administrator determines that a review of a proposed regulation cannot be completed within sixty days, the Administrator may, upon written notice to the head of the agency involved and placement of such notice in the public file, extend the review period for an additional thirty days.

(3) The review shall be considered complete, if the Administrator either fails to provide written notice of the extension to the agency head under paragraph (2), or at the conclusion of the ninety day review period.

[§ 3518.] § 3519. Effect on existing laws and regulations

(a) Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information activities is subject to the authority conferred on the **[Director] Administrator** by this chapter.

(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

(c)(1) Except as provided in paragraph (2), this chapter does not apply to the collection of information—

(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter.

(B) during the conduct of (i) a civil action to which the United States or any official or agency thereof is a party or (ii)

an administrative action or investigation involving an agency against specific individuals or entities;

(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

(D) during the conduct of intelligence activities as defined in section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

(2) This chapter applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by Public Law 89-306 on the Administrator of the General Services Administration, the Secretary of Commerce, or the Director of the Office of Management and Budget.

(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

[§ 3519.] § 3520. Access to information

Under the conditions and procedures prescribed in section 716 of title 31, the **[Director]** Administrator and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of his responsibilities. For this purpose, the comptroller general or representatives thereof shall have access to all books, documents, papers and records of the Office.

[§ 3520.] § 3521. Authorization of appropriations

(a) Subject to subsection (b), there are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this chapter, and for no other purpose **[\$5,500,000 for each of the fiscal years 1987, 1988, and 1989]** *for the four years next following the first September 30 occurring after the date of the enactment of the Federal Information Resources Management Act, \$5,500,000 for the first year, \$6,500,000 for the second year, \$7,000,000 for the third year, and \$7,000,000 for the fourth year. Notwithstanding the provisions of the preceding sentence, if the date of the enactment of the Federal Information Resources Management Act is on or after September 30, 1990, all authorizations under this subsection shall be for successive years and the first such year shall be fiscal year 1990.*

(b) No funds may be appropriated pursuant to subsection (a) unless such funds are appropriated in an appropriation Act (or continuing resolution) which separately and expressly states the

amount appropriated pursuant to subsection (a) of the section. No funds are authorized to be appropriated to the Office of Information and Regulatory Affairs, or to any other officer of administrative unit of the Office of Management and Budget, to carry out the provisions of this chapter, or to carry out any function under this chapter, for any fiscal year pursuant to any provision of law other than subsection (a) of this section.

(c) Funds appropriated pursuant to subsection (a) may not be used to carry out any function or activity which is not specifically authorized or required by this chapter, but funds so appropriated may be used for necessary expenses of a function or activity which is so authorized or required, such as hire of passenger motor vehicles and services authorized by section 3109 of title 5, United States Code. For the purposes of this subsection, the review of a rule or regulation is specifically authorized or requested by this chapter only to the extent that such review is for the sole purpose of reviewing an information collection request contained in, or derived from, such rule or regulation.

